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(5) In failing to find that the Heacock local registration is a nullity because it is a registration of a personal surname, because it is a registration of a trade-mark colorably similar to previously registered and known trade-marks owned by another, because it never was applied to any wares, and because Heacock's use was not a trade-mark use 22

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932

Nos. 506 and 507

AMERICAN TRADING COMPANY,
Petitioner,

vs.

H. E. HEACOCK CO.,
Respondent.

WM. A. ROGERS, LTD., and AMERICAN TRADING COMPANY,
Petitioners,

vs.

H. E. HEACOCK CO.,
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF ON BEHALF OF PETITIONERS.

Opinions Below.

There are two opinions below, each covering both these cases, which were heard and decided together. The opinion of the Philippine Supreme Court, November 21, 1930 (R. 286), is not yet officially reported.

It was written by MR. JUSTICE JOHNS and concurred in by CHIEF JUSTICE AVENCEÑA and JUSTICES STREET, MALCOLM, ROMUALDEZ and VILLA-REAL. JUSTICE JOHNSON did not take part, and JUSTICE OSTRAND reserved his vote (R. 302).

The opinion of the Court of First Instance for the Judicial District of Manila (IMPERIAL, J.; R. 193), March 11, 1929, is not officially reported.

Petitioners' motions in the Philippine Supreme Court for rehearing and new trials were denied on March 7, 1931, by an order without written opinion. JUSTICE OSTRAND dissented, and JUSTICES JOHNSON and VILLAMOR took no part (R. 543).

Jurisdiction.

Final judgments were entered by the Insular Supreme Court on March 7, 1931 (R. 543-544).

On August 15, 1931, MR. JUSTICE BUTLER extended the time for presenting the petitions for certiorari to November 6, 1931 (R. 558-559). The petitions were filed on that date, and were granted on January 11, 1932.

The jurisdiction of this Court is invoked under Section 7 of the Act of February 13, 1925, Chapter 229 (43 Stat. 940).*

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*U. S. C. §349: "Certiorari to review decisions of Supreme Court of Philippine Islands.—In any case in the Supreme Court of the Philippine Islands wherein the Constitution, or any statute or treaty of the United States is involved, or wherein the value in controversy exceeds $25,000, or wherein the title or possession of real estate exceeding in value the sum of $25,000 is involved or brought in question, it shall be competent for the Supreme Court of the United States, upon the petition of a party aggrieved by the final judgment or decree, to require, by certiorari, that the cause be certified to it for review and determination with the same power and authority, and with like effect, as if the cause had been brought before it on writ of error or appeal; and, except as provided in this section, the judgments and decrees of the Supreme Court of the Philippine Islands shall not be subject to appellate review." (Feb. 13, 1925, Chap. 229, §7, 43 Stat. 940.)

The case involves more than $25,000 (R. 554-555), and presents questions of the construction and applicability of Acts of Congress specifically mentioned in the next paragraph.

Statutes Involved.

The following are the statutes involved:

1. The Federal Trade-Mark Law, Act of Congress of February 20, 1905 (Chap. 592, 33 Stat. 724-731), particularly Sections 1, 16, 27 and 29 (Appendix, p. 12).

2. The Philippine Trade-Mark Law, Act No. 666 of the Philippine Commission, approved March 6, 1903, as amended (Appendix, p. 1).

3. The Tariff Act for the Philippine Islands, Act of Congress of August 5, 1909, Section 26 (Chap. 8, 36 Stat. 130, 177; Appendix, p. 14).

4. The "Jones Law," the Organic Act for the Philippine Islands, Act of Congress of August 29, 1916, Sections 5, 6, 8, 10, 19 and 26 (Chap. 416, 39 Stat. 545; Appendix, p. 15).

Statement of the Case.

These two actions were begun in the Court of First Instance for the Judicial District of Manila, Philippine Islands. In the first, complaint was filed January 12, 1928, by H. E. Heacock Co., respondent here, as plaintiff, against American Trading Company, a corporation of the Philippine Islands, one of the petitioners, as sole defendant (R. 2-5), for an injunction to enjoin the Trading Company from selling in the Islands nickel,

silver-plated or silver goods "under any mark where the name ROGERS is used, and from any other means by which the public may be induced to believe that the flatware imported and sold by the defendant is the flatware imported and sold by this plaintiff and known as ROGERS flatware" (R. 5), and for an accounting, for double the amount of petitioners' profits and for damages.

The second case was a cross action filed the following day, January 13, 1928 (R. 10-15), by these petitioners, Wm. A. Rogers, Ltd., a Canadian corporation, doing business in Toronto and in Niagara Falls, New York,* as co-plaintiff with American Trading Company, against H. E. Heacock Co., plaintiff in the first action, to enjoin it "from further interference with the business of these plaintiffs conducted under" the trade-mark "WM. A. ROGERS, E. P. N. S."† and other trade-marks set out in the complaint in that action (R. 11, 14), and for damages and general relief. A preliminary injunction was issued in the second action (R. 15-17). Answers were filed in both cases (R. 5-9, 18-21). A cross complaint was filed in the second case by H. E. Heacock Co. against Wm. A. Rogers, Ltd., alone (R. 21-25); and an answer was filed to the cross complaint (R. 25-27). By stipulation the cases were tried together (R. 27, 193); and on March 11, 1929, the Court of First Instance (IMPERIAL, J.) handed down his decision in both cases (R. 193-248). Judgment was rendered in

* R. 30, amending by motion the erroneous allegation in the complaint (R. 10) of its being a New York corporation.

† The letters "E. P. N. S." and "E. P. B. M.," appearing in the pleadings as though they were parts of the trade-marks, and copied in the opinion of the Philippine Supreme Court (R. 9, 11, 282), are really quality or grade marks, and no part of the registered trade-marks. "E. P. N. S." stands for "Electro Plated Nickel Silver," and "E. P. B. M." for "Electro Plated Britannia Metal."

favor of Heacock and against Wm. A. Rogers, Ltd., and American Trading Company for (a) an account of profits from the sale of all wares "bearing the trade-mark 'Rogers' and other distinctive symbols"; (b) to pay the amount of said profits and earnings; (c) that they perpetually abstain "from importing and selling in the Philippine Islands silver-plated wares for use in the table and for other purposes similar to those imported and sold by the plaintiff, bearing the trade-mark 'Rogers'" (R. 247). This was affirmed by the Supreme Court with costs and judgment entered (R. 543, 544).

The complaint in the second case was dismissed with costs (R. 248). A petition for a writ of mandamus was filed, directed to the Judge of the lower court, to obtain certification of defendant's bill of exceptions (R. 260). Application for a rehearing and motion for a new trial was filed December 19, 1930 (R. 303), and affidavits were filed in support of this application and motion (R. 424-435). Both the application and the motion were denied (R. 543). Mr. Justice Ostrand dissented. Justices Johnson and Villamor took no part.

Petitioners appealed to the Supreme Court of the Philippine Islands (R. 248), which affirmed the judgments of the Court of First Instance in both cases (R. 543-544).

Statement of Facts.

1901-1905: About this time, International Silver Company, with factories in Connecticut, began to export to the Philippine Islands various of its lines of tableware (R. 34, 35, 37), and appointed, as its agent, a concern in Manila, now known as H. E. Heacock Co.

(R. 34, 35, 37, 288-290). Heacock represents the Silver Company in the Islands to-day (R. 46). From the beginning, the goods exported to the Islands by the Silver Company have been its regular lines as sold in the United States—the same quality, the same designs and bearing the same brands as those used here (R. 49). They have been "exactly the same articles which the International Silver Company is selling under its trade-marks in the United States" (R. 49). These goods are not manufactured specially for Heacock (R. 49). Heacock's witnesses stated that these trade-marks are registered in the United States (R. 42-46), but the record contains no copies of the registrations.

1906-1917: At different times during these years, Wm. A. Rogers, Ltd., registered in the United States, under the Act of 1905, the following trade-marks (R. 158; Exs. 4, 5, 6):

Reg. No. 97,079, "1881 (R) ROGERS (R)," * used since 1901 (R. 158, 168; Exs. 6, 9; Appendix, p. 19).

Reg. No. 68,369, "WM. A. ROGERS," used since 1894 (R. 158, 173; Exs. 5, 10; Appendix, p. 19).

Reg. No. 69,548, "(Cross) W. R. (Keystone)," used since 1896 (R. 158, 179; Exs. 4, 11; Appendix, p. 19).

The above three marks were used on goods sold in the Islands by Wm. A. Rogers, Ltd.

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*"(R)" as used here means that a wreath design enclosing the letter "R" precedes and follows "ROGERS."

In litigation between the Silver Company and Wm. A. Rogers, Ltd., and their predecessors, the trade-mark "Wm. A. Rogers" and the registration thereof has been upheld and this mark held not to conflict with those of the Silver Company. The registration of a mark consisting of "(Wreath) Rogers (Wreath)" with "1881" above and the words "Quadruple" and "New York" below was also sustained and the mark held not to conflict with those of the Silver Company. This, in effect, is the mark, "1881 (Wreath) Rogers (Wreath)," which is used in the Islands.* The litigation involving these marks occurred *before* 1918.

1918: In this year and after the registration and adjudication of the trade-marks of Wm. A. Rogers, Ltd., Heacock, by prior arrangement with International Silver Company (R. 46-47, 48), with that company's knowledge and for its benefit,† registered "Rogers" in Manila under the local Act No. 666. A facsimile of the certificate of registration is reproduced in the Appendix.

In the application on which this registration was granted, Heacock made formal representations to the

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**Wm. A. Rogers* v. *Wm. Rogers Mfg. Co.*, 70 Fed. 1019 (2nd Cir., 1895); *Wm. Rogers Mfg. Co.* v. *Wm. A. Rogers*, 84 Fed. 639 (E. D. N. Y., 1898), aff'd 95 Fed. 1007; *Wm. A. Rogers* v. *International Silver Co.*, 30 App. D. C. 97 (1907); *Wm. A. Rogers, Ltd.* v. *International Silver Co.*, 153 O. G. 1085, 34 App. D. C. 410 (1910); *Wm. A. Rogers, Ltd.* v. *International Silver Co.*, 154 O. G. 837, 34 App. D. C. 484 (1910).

In *Wm. A. Rogers, Ltd.* v. *International Silver Co.*, 155 O. G. 554, 34 App. D. C. 413, denial of registration of "(R) Rogers (R) 1881," because of its alleged similarity to the Silver Company's "(Anchor) Rogers (Anchor)," was affirmed. The majority opinion stated that, because of its position, no significance would be likely to be attached to the numeral. Shepard, C.J., dissented on the ground that the conclusion was inconsistent with that in *Wm. A. Rogers, Ltd.* v. *International Silver Co.*, 34 App. D. C. 410 (*supra*), "between the same parties, in which it was decided that the rival marks are not deceptively similar."

†Mr. Gaches, president and general manager of the respondent, Heacock Company, testified on cross-examination (R. 45-48):

"Q. Mr. Gaches, the merchandise which you advertised, according to those advertisements, Exhibits A, B, C and D, in

Philippine Government, as required by Sections 11 and 12 of Act No. 666.

"The trade-mark consists of the word 'ROGERS' in ordinary Roman capitals.

The trade-mark has been continuously used in the business of said corporation for fifteen years.

The class of merchandise to which this trade-mark is appropriated is spoons, and other flat-ware whether nickel, silver plated or silver, as well as nickel, silver plated or silver goods of all kinds save and except cutlery.

The trade-mark is applied or affixed to the goods by stamping or engraving, or applying the same in any other suitable manner to the back, bottom, side, edge or top of the goods wherever convenient, and is also applied by printing upon labels placed upon the packages containing the goods" (R. 138-139; Ex. G).

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the year 1905, by whom was that merchandise manufactured? A. By the International Silver Company.

Q. In the United States? A. In the United States.

Q. And the merchandise which you are selling now, and which according to you is 'Rogers' ware, is manufactured by the same factory? A. Yes, sir" (R. 45).

* * * * * * *

"Q. If the International Silver Company should take the representation away from the H. E. Heacock Company, would your company insist upon making this mark 'Rogers' prevail against the International Silver Company? A. Since the International Silver Company knew of and consented previously to the registration of that trade-mark, we would probably consider it necessary to leave that mark to them" (R. 46).

* * * * * * *

"Q. You said that the International Silver Company knew that the H. E. Heacock Company had registered or was going to register the mark 'Rogers' in the Philippines. Having this knowledge, has the International Silver Company ever protested or objected to the registration of the mark 'Rogers' by the H. E. Heacock Company in the Philippines? A. No, sir; on the contrary, they knew it and did not protest" (R. 48).

And the Philippine Supreme Court expressly finds:

"It having been admitted that Heacock Company registered the word 'Rogers' as a trade-mark in June, 1918, and it appearing that such trade-mark was registered with the knowledge, consent and approval of the International Silver Company, in fact, that it was made for its use and benefit, the question is squarely presented as to what is its legal force and effect * * *" (R. 290).

The verification of this statement by Samuel F. Gaches reads as follows:

> "That he is the President of the firm of H. E. Heacock Co., the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that the said firm at this time has a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the trade-mark is used by the said corporation in commerce in the Philippine Islands, and that the description and facsimiles presented for record truly represent the trade-mark sought to be registered" (R. 139-140; Ex. G).

1923-1925: About this time (R. 30, 114), Wm. A. Rogers, Ltd., began to export its lines of Rogers silverware to the Philippine Islands and named as its agent in Manila, American Trading Company, the other petitioner, a Philippine corporation. The goods of Wm. A. Rogers, Ltd., are manufactured in the United States (R. 103). Ninety-five per cent. of its merchandise sold in the Islands is shipped directly from factories in the United States to local dealers in the Philippines (R. 102, 114-115). The merchandise thus sent to the Philippines is marked with the regular trade-marks of Wm. A. Rogers, Ltd. (*supra*). The goods of Wm. A. Rogers, Ltd. have been sold and advertised in the catalogues of dealers in the Islands since 1924 (R. 33, 105).

1928: In this year, on January 12th, Heacock filed against petitioner American Trading Company the first of these two actions to debar the goods of Wm. A. Rogers, Ltd. from the Philippine Islands (R. 1).

The second action was filed the next day (R. 10).

1901-1928: In all this time Heacock never manufactured any silver at all, and never itself marked any silver with either the word "Rogers" *simpliciter,* nor with any name which included the word "Rogers." All the silverware sold during that entire time was the routine merchandise of the Silver Company and bore one or another of the Silver Company's regular brands (R. 49). Mr. Gaches, when asked what marks the Heacock goods have carried since 1901, stated: "The mark 'Rogers' followed or preceded by any other word or sign that we care to put" (R. 35-36). The record is clear that Heacock never put any marks whatever on the goods. This testimony would be false were it not probable that he uses the word "we" to refer to International Silver Company.

SITUATION TO-DAY: The Silver Company sells goods in the Islands under the marks "1847 Rogers Bros.," "Wm. Rogers & Son AA," "Wm. Rogers & Son," and "Rogers Nickel Silver" (R. 133, 153-154; Exs. F, I, J, K, L, M).

Wm. A. Rogers, Ltd. sells its goods in the Islands under the brands "Wm. A. Rogers" (R. 158); "(Cross) W. R. (Keystone)" (R. 158); "1881 (Wreath) Rogers (Wreath)" (R. 158), and "Wm. A. Rogers Nickel Silver" (R. 84, 133).

In the Islands, Wm. A. Rogers' marks are registered under Act No. 666 (R. 291), and Heacock owns a registration of the word "Rogers" under Act No. 666, and claims exclusive right to enjoin the use, in the Islands, of all silverware trade-marks which contain the word "Rogers." The Silver Company controls Heacock's registration (R. 290-292). Did the Silver Company not control it, who can doubt that it would

have been the first to attack the legality of this registration.

The right of the parties to the use of these various marks in interstate commerce in the United States has been discussed in various cases; for instance, Manton, J., in *Wm. A. Rogers, Ltd.* v. *Rogers Silverware Redemption Bureau, Inc.*, 247 Fed. 178, 180 (1917), said:

> "Neither the plaintiff nor the International Silver Company has the right to the name 'Rogers' per se, unaccompanied by their own particular initials or trade-mark, but both the International Silver Company and the plaintiff have the right to restrain the unauthorized use of the name 'Rogers' by persons without rights therein. Their mutual rights were considered in the cases of Wm. A. Rogers, Limited v. International Silver Co., 30 App. D. C. 97, and Id., 34 App. D. C. 410. There it was said:
>
> > 'The sole use of his name for the time prescribed was enough, we think, to constitute an exclusive use of the mark within the meaning of the proviso. The opposer did not show any right to use the mark or name "Wm. A. Rogers," but only those of "Wm. Rogers Mfg. Co." and "Wm. Rogers & Son." In view of what has been heretofore said, it is unnecessary to consider whether, if these were all technical trade-marks, the applicant's mark so closely resembles the others as to constitute an infringement. Each party is entitled to use his own name, actually or legally acquired, without regard to the confusion that may result from similarity. No right of property will be concluded by the registration of appellant's mark.'" (The "applicant's mark" was "Wm. A. Rogers.")

In this cause, Wm. A. Rogers, Ltd. claims only the right to compete for the "Rogers" business in the Islands on the same basis on which it has competed for it here.

Legislation Relating to Trade-Marks in the Philippine Islands.

The historical background of the trade-mark law applicable in the Philippines, briefly, is that, prior to the American occupation of the Islands, trade-marks were registered under Spanish royal decrees, the latest of which was the decree of 1888, which was specifically repealed by Section 23 of Act No. 666.* Prior to the enactment of Act No. 666, the Division of Customs and Insular Affairs of the War Department, after the American occupation, by circulars, on April 11, 1899, June 1, 1899, and September 25, 1899, had recognized the Spanish decree and continued it in effect with some further regulations as to the method of registration. The Spanish Code of Commerce (Art. 21, sub-para. 12) also provided for the registration of trade-marks used by merchants, in the "commercial registries."

Upon the American occupation, the Islands came under the plenary power of Congress (Clause 2, Sec. 3, Art. IV of the Constitution)

> "to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."

Under this power, Congress, by the "Spooner Amendment" (31 Stat., Chap. 803, pp. 895, 910; March 2, 1901), provided for the government of the Islands by

* Appendix, p. 10.

the President, and afterwards, on July 1, 1902, enacted the first so-called Organic Act (32 Stat. 691), establishing a civil government for the Islands, and granting legislative power to the Philippine Commission.

In the year 1903, the Philippine Commission enacted the Philippine Trade-Mark Act, Act No. 666. At the time of its enactment there was no United States legislation concerning trade-marks in force in the Islands, since the Federal Trade-Mark Act of 1881 (21 Stat. 502) was limited in its operation to the continental United States. Act No. 666 provides:

> "SEC. 2. Anyone who produces, or deals in, merchandise of any kind by actual use thereof in trade may appropriate to his exclusive use a trade-mark not so appropriated by another, to designate the origin or ownership thereof * * *.
>
> SEC. 3. The ownership or possession of a trade-mark, heretofore or hereafter appropriated, as in the foregoing section provided, shall be recognized and protected in the same manner and to the same extent, as are other property rights known to the law. To this end any person entitled to the exclusive use of a trade-mark to designate the origin or ownership of goods he has made or deals in, may recover damages in a civil action from any person who has sold goods of a similar kind, bearing such trade-mark, * * *."

In the statute as first passed, Section 4 read:

> "SEC. 4. In order to justify recovery for violation of trade-mark rights in the preceding sections defined, it shall not be necessary to show that the trade-marks have been registered under the royal decree * * * nor shall it be necessary

to show that the trade-mark has been registered under this Act. It shall be sufficient to invoke protection of his property in a trade-mark if the party complaining shall prove that he has used the trade-mark complained of on his goods a sufficient length of time so that the use of a trade-mark by another would be an injury to him and calculated to deceive the public into the belief that the goods of that other were the goods manufactured or dealt in by the complaining party."

In 1926 Section 4 was amended by striking out the above language and substituting the following:

"SEC. 4. No action shall be brought for damages for the violation of the rights to use trade-marks defined in the preceding sections nor shall criminal proceedings be entertained as provided in section six of this Act, unless it be first shown that the trade-mark or trade-name alleged to have been violated or which gave rise to the criminal action has been duly registered in the Bureau of Commerce and Industry, in accordance with the provisions of this Act." (As amended by Act No. 3332, Sec. 1.)

The effect of this change was to make registration under Act No. 666 a prerequisite to an action for infringement of a trade-mark.

The Act also provides for an action for unfair competition:

"SEC. 7. Any person who in selling his goods shall give them the general appearance of goods of another manufacturer or dealer, either in the wrappings of the packages * * *, or the devices or words thereon, or in any other feature of their

appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer other than the actual manufacturer or dealer, and who clothes the goods with such appearance for the purpose of deceiving the public and defrauding another of his legitimate trade, * * * shall be guilty of unfair competition * * *. This section applies in cases where the deceitful appearance of the goods, misleading as to origin or ownership, is effected not by means of technical trade-marks, emblems, signs, or devices, but by the general appearance of the package containing the goods, or by the devices or words thereon, even though such packages, devices, or words are not by law capable of appropriation as trade-marks * * *."

In Sections 11 and 12 the formal requirements for registration are set forth. Section 11 reads (in part):

"The owners of trade-marks or trade-names domiciled in the Philippine Islands, or the United States, or in any foreign country which by treaty, convention, or law affords similar privileges to the citizens of the United States and of the Philippine Islands, may obtain registration of such trade-marks or trade-names by complying with the following requirements:

First. By causing to be recorded in the Bureau of Commerce and Industry a statement specifying the name, domicile, location, and citizenship of the applicant; the general class or classes of merchandise to which the trade-mark claimed has been appropriated; or in case of a trade-name the description of the business, profession, or occupation it is to distinguish; a description of the trade-*mark* or trade-name itself, with facsimiles thereof, and *a statement of the mode in*

> *which the same is applied and affixed to goods,* or is to be used in the business, profession, or occupation, and the length of time during which the trade-mark or trade-name has been used." (As amended by Act No. 1407, Sec. 3 (b), and modified by Act No. 2728.) (Italics supplied.)

In Section 13, registration of marks similar to "registered or known" trade-marks is forbidden.

> "SEC. 13. * * * But no alleged trade-mark or trade name shall be registered which is * * * identical with a registered or known trade-mark owned by another and appropriate to the same class of merchandise, or which so nearly resembles another person's trade-mark or trade name as to be likely to cause confusion or mistake in the mind of the public, or to deceive purchasers."

Section 14 of the Act as originally drawn in 1903 was the section now numbered Section 15. By Act No. 2460 the present Section 14 was inserted in 1915. It forbids entry at any custom house in the Islands of imported goods which (a) "copy or simulate the name of any domestic manufacture, or manufacturer or trade," or (b) "copy or simulate a trade-mark or trade-name registered in accordance with the provisions of this Act," or (c) "bear a name or mark calculated to induce the public to believe that the article is manufactured in the Philippine Islands."

This section contains a most interesting proviso, i.e.:

> "*Provided, however,* That this section shall not be construed to affect rights that any person may have acquired by virtue of having registered a trade-mark under the laws of the United States."

The last paragraph of Section 14 reads:

> "In matters arising under this section original jurisdiction is hereby conferred upon the Court of First Instance, and appellate jurisdiction upon the Supreme Court, identical with the jurisdiction conferred upon such courts by section twenty-six of the Act of Congress approved August fifth, nineteen hundred and nine, entitled 'An Act to raise revenue for the Philippine Islands, and for other purposes.' (As amended by Act No. 2460.)"*

Section 17 provides that a registration shall remain in force for thirty years.

Section 23 repeals the last royal decree as to registration of trade-marks.

Two years after Act No. 666 was passed, on February 20, 1905, Congress passed the present federal Trade-Mark Act (33 Stat. 724; 15 U. S. C., Secs. 81 *et seq.*), providing (Sec. 1) that the owner of a trade-mark

> "used in commerce with foreign nations, or among the several States, or with Indian tribes, provided such owner shall be domiciled *within the territory of the United States* * * * may obtain registration for such trade-mark." (Italics supplied.)

And further (in contrast to the Act of 1881), by Section 29:

> "That in construing this act the following rules must be observed, except where the contrary intent is plainly apparent from the context thereof: The United States includes and em-

* The Act here referred to is the Tariff Act for the Philippine Islands (Act of Congress of August 5, 1909, Chap. 8, 36 Stat. 130-177). Section 14 is printed herein, at Appendix page 14.

> braces all territory which is under the jurisdiction and control of the United States. The word 'States' includes and embraces the District of Columbia, the Territories of the United States, *and such other territory as shall be under the jurisdiction and control of the United States.*" (Italics supplied.)

The Customs Regulations of the United States Treasury Department promulgated in 1908 contain the following provision, which still appears in the Customs Regulations:

> "ART. 325. INSULAR TERRITORY.—The provisions of the Act of February 20, 1905, apply to Porto Rico, the Philippine Islands, Hawaii, and any other territory under the jurisdiction and control of the United States" (Customs Regulations of 1908, United States Treasury Department Rules and Regulations, Vol. III, p. 159).

In 1909, Congress, in enacting a Tariff Law for the Philippine Islands, provided:

> "SEC. 26. That original jurisdiction in all cases arising in the Philippine Islands is hereby conferred upon the courts of first instance of the Philippine Islands and appellate jurisdiction upon the Supreme Court of the Philippine Islands in matters arising under the Act of Congress approved February 20, 1905, entitled 'An Act to authorize the registration of trade-marks used in commerce with foreign nations or among the other States or with Indian tribes and to protect the same,' identical with the jurisdiction conferred upon courts of the United States by section Seventeen of said Act" (Act of Congress

of August 5, 1909, Chap. 8, 36 Stat. 130, 177; Appendix, p. 14).*

In 1916, the Congress enacted a new Organic Act for the Islands ("Jones Law," sometimes called "Autonomy Act").† In this legislation it provided that "the statutory laws of the United States *hereafter enacted;* shall not apply to the Philippine Islands except when they specifically so provide, or it is so provided in this Act" (Sec. 5; *italics supplied*), and specified that the laws then in force in the Islands shall continue in force until changed by the legislative authority provided by that Act or by Act of Congress (Sec. 6); that general legislative power in the Islands shall be vested in the Philippine Legislature subject to the limitations provided in the Act (Sec. 8), and that all Acts of the Philippine Legislature are to be reported to the Congress, which expressly "reserves the power and authority to annul the same" (Sec. 19), and that

> "the trade relations between the Islands and the United States shall continue to be governed exclusively by laws of the Congress of the United States" (Sec. 10),

and also that

> "the supreme court and the courts of first instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law" (Sec. 26).

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*This Act is ignored in the opinion of Attorney-General Jaranilla of the Philippine Islands, of July 25, 1928, in which he stated that "the owner of a trade-mark registered in the United States, in order to be entitled to the protection accorded by Act No. 2460 and to be enabled to sue for damages for the violation of his rights to his trade-mark," must register under Act No. 666. Circular Letter No. 425 of the Bureau of Customs at Manila, of July 28, 1928, so advising manufacturers and importers, is based on this opinion.

†Act of Congress of August 29, 1916, Chap. 416, 39 Stat. 545; Appendix, p. 15.

In 1926, the Philippine Government promulgated Customs Administrative Order No. 194, concerning trade-marks and trade names.* It contains the following:

> "PARAGRAPH 1: Act No. 666 of the Philippine Legislature, as amended by Acts Nos. 744, 803, and 2460, contains the rules and regulations of the Government of the Philippine Islands relative to property in *domestic* trade-marks and trade names and the protection to be afforded the owners thereof, while the Act of Congress of February 20, 1905, as amended, provides for the registration and protection of trade-marks used in connection with *foreign* nations or between the Philippine Islands and the several States of the United States." (*Italics are those of the Regulation itself.*).

Opinions of the Insular Courts.

The Court of First Instance of Manila expressly held (R. 212-216) that the Federal Trade-Mark Law, the Act of February 20, 1905,

> "regarding trade-marks and patents has not been extended or made applicable to the Philippine Islands" (R. 216),

and is not in force there; and the opinion of the Insular Supreme Court impliedly so holds, and expressly holds that the effect of the *proviso* in Section 14 of the local law, Act No. 666, added by Philippine Act No. 2460,

> "* * * *Provided, however,* that this section shall not be construed to affect rights that any

* Republished in 1927 in official publication of the Philippine Government, entitled "Laws, Rules and Regulations Governing the Registration of Trade-Marks and Trade Names in the Philippine Islands"; quoted, R. 400-401; Appendix, p. 17.

> persons may have acquired by virtue of having registered a trade-mark under the laws of the United States,"

is limited to the purposes of that one section of the Act alone (R. 297-298); thus confining the effect of the *proviso* to securing to shippers to the Philippines of goods bearing federally registered trade-marks, the naked right

> "of the importation of merchandise into the Philippine Islands and its entry at any custom house."

The Court adds that "nowhere in Section 14 is the word 'sale' or 'sell' used" (R. 297), and, in effect, enjoins the sale of such goods in the Islands.

The opinion states:

> "In the final analysis the important and decisive question is the legal force and effect of the registration of the word 'Rogers' by the Heacock Company in June, 1918, and we are clearly of the opinion that the registration at that time of that word is valid and that as such it should be protected under the provisions of Act No. 666 and its amendments" (R. 302).

The opinion does not mention either the provisions of Section 10 of the Organic Act that the trade relations of the Islands shall be "governed exclusively by laws of the Congress of the United States," nor that of Section 26 of the Tariff Act for the Philippines expressly conferring upon the Philippine courts jurisdiction in matters arising under the Federal Trade-Mark Act of 1905.

Specification of Errors to Be Urged.

Petitioners will urge the errors assigned in the "Application for Rehearing and Motion for New Trial" submitted to the Philippine Supreme Court (R. 303-400), and in the "Exception and Notice of Petition for Writ of Certiorari" (R. 545-541), and (without waiving any others) particularly that the Philippine Supreme Court erred: (1) In affirming the judgments of the Court of First Instance; (2) In not holding the Federal Trade-Mark Act of 1905 in force in the Islands; (3) In so interpreting the local Trade-Mark Law, Act No. 666, as to permit its use for the purpose of interfering with and burdening trade relations between the United States and the Philippines, which relations are under the exclusive control of the Congress; (4) In not holding that when both litigants own trade-marks, registered under the Federal Trade-Mark Act, which contain a common family name or other common denominator, which both litigants are entitled to use and are using in the United States, the insular courts have no power to enjoin the use of such name by either litigant in commerce with the Islands, this being especially true where, as here, the separate use of the marks has received approval of the courts; (5) In failing to find that the Heacock local registration is a nullity because it is a registration of a personal surname, because it is a registration of a trade-mark colorably similar to previously registered and known trade-marks owned by another, because it never was applied to any wares, and because Heacock's use was not a trade-mark use; (6) In failing to hold that the wares manufactured by Wm. A. Rogers, Ltd., bearing its federally registered trade-marks, used by it in interstate commerce in the

United States, may be brought into the Islands and there sold and delivered in interstate commerce, and that such right may not be destroyed or burdened by local legislation nor by any local trade-mark registration under the local law; and (7) In holding that the right, which the Philippine Supreme Court recognized, to bring such goods into the Islands, was limited to landing them there and entering them in the custom house, and did not extend to selling and delivering them to customers.

Summary of Argument.

The sale of silverware under names which contain the word ROGERS has long been a business of importance. The situation here involved discloses an attempt on the part of Heacock and International Silver Company, by previous arrangement among themselves (R. 46-47), to monopolize this business in the Philippine Islands by local registration, not of the trade-marks actually used on the goods, but of the single word "Rogers."

The opinion of the Supreme Court summarizes the situation thus:

> "It having been admitted that Heacock Company registered the word 'Rogers' as a trade-mark in June, 1918, and it appearing that such trade-mark was registered with the knowledge, consent, and approval of the International Silver Company, in fact that it was made for its use and benefit, the question is squarely presented as to what is its legal force and effect, and what legal right Heacock Company has to the use and enjoyment of the word and trade-mark 'Rogers.'

> It is conceded that Heacock Company is not the manufacturer of the wares which it sells under the trade-mark. That such wares are manufactured by the International Silver Company, from which they are purchased by Heacock Company and by it sold to the people in the Philippine Islands. * * * That is to say, fundamentally, the trade-marks of the International Silver Company, through which the Heacock Company purchases its wares, and the trade-marks of Wm. A. Rogers, Ltd., from which the American Trading Company takes its orders, are both duly registered in the Patent Office of the United States, and that the name 'Rogers' was registered here by Heacock Company in June, 1918, and the trade-marks of Wm. A. Rogers, Ltd. were first registered here after the trial of these cases in the lower court" (R. 290-292).

This record, therefore, presents squarely this question: As between two American competitors, using various trade-marks with a personal name like ROGERS as a common denominator—to the use of which name both concerns have been held to have rights—may one of these competitors procure or consent to a local registration, by its agent in the Philippines, not of the exact trade-mark used on its goods sold in the Islands, but of this common denominator, and thus secure to this one competitor a monopoly of the trade in the Islands in goods carrying such mark.

The trade between the United States and the Islands is regulated and controlled by the Congress (Jones Act, Sec. 10). This has been the fact since our occupation of the Islands (*id.*). The government of the Islands is an agency of the Congress.

Act No. 666 makes careful distinction between marks used in commerce between the United States and the Islands, and marks on goods exported to the Islands from other parts of the world, or made and sold locally in the Islands (Sec. 14). The marks here involved are used in commerce with the United States.

When Heacock applied for his registration (1918), there were in the Patent Office registrations under the Act of 1905 of the marks "1881 (R) Rogers (R)" and "Wm. A. Rogers," both belonging to Wm. A. Rogers, Ltd. (Facsimiles of these registrations are in the Appendix, p. 19.)

International Silver Company had actual knowledge of the registration and use of these marks before 1918, from litigation to which it was a party, and this knowledge will be held to have been shared by Heacock as the agent of the Silver Company.*

The theory of the Court below in issuing this injunction apparently was this: Although all the "Rogers" goods Heacock has sold bear regular trade-marks of the International Silver Company, like "1847 Rogers Bros.," and although Heacock never marked any silverware with the word "Rogers" alone, yet, because Heacock claimed that the word "Rogers" in the Philippines had come to be used by the public, to some extent, to indicate silverware sold by him, he is entitled to register "Rogers" as his exclusive property.

The lower Courts held that Heacock's rights were not affected by the fact that the goods of Wm. A. Rogers, Ltd. were being brought into the Islands from the United States, nor by the fact that they bore fed-

*Wm. A. Rogers v. International Silver Co., 30 App. D. C. 97 (1907); Wm. A. Rogers, Ltd. v. International Silver Co., 34 App. D. C. 410; Wm. A. Rogers, Ltd. v. International Silver Co., 34 App. D. C. 413.

erally registered trade-marks. These Courts took the position that this registration under the local Act, while not preventing the goods from being landed in the Islands and entered in the custom house, rendered it illegal to sell them or to deliver them to customers in the Islands. The business situation thus created by Heacock's acts, and its effect on our trade with the Islands, presents the practical problem of this case.

ARGUMENT.

POINT I.

The Court below erred in so interpreting Act No. 666 as to cause it to interfere with and to burden trade relations between the United States and the Islands (Jones Law, Sec. 10).

Irrespective of the validity or invalidity of respondent's local registration, petitioner was entitled to send its goods marked with its federally registered trade-marks to the Islands and sell them there.

The proviso in Section 14 of Act No. 666 is important here. It reads:

> *"Provided, however,* That this section shall not be construed to affect rights that any person may have acquired by virtue of having registered a trade-mark under the laws of the United States."

This Section 14, which is closely analogous to Section 27 of the Act of 1905,* was inserted in the Act to protect the local business of the Islands from injurious foreign competition under trade-marks which colorably

* Appendix, p. 13.

imitate the marks locally used. The proviso indicates an intention to provide, by this statute, for marks registered under the Act of 1905, protection auxiliary or supplemental to that given by that Act. It seems to differentiate goods imported from the United States under registered trade-marks from all other imported goods; doubtless the reason was that the Islands are not foreign to the United States (*Fourteen Diamond Rings* v. *United States,* 183 U. S. 176).

Section 27 of the Act of 1905 gives to registrants the right to use their registrations as a means of preventing the importation into the United States of goods bearing infringing trade-marks. This section permits Wm. A. Rogers, Ltd. to file its registrations in the ports of entry in the Philippine Islands.

But if this injunction stands, Wm. A. Rogers, Ltd. finds itself in this position. It has the right, under Section 27, to so file its registrations, but at these same ports its own goods, bearing the very registered trade-marks thus filed by it, are impounded, so to speak, for their sale in the Islands is thus prohibited.

Customs Administrative Order No. 194 of the Philippine Government, January 13, 1926 (R. 400), states that:

> "Act 666 * * * contains the rules and regulations of the Government of the Philippine Islands relative to property in *domestic* trade-marks * * * while the Act of Congress of February 20, 1905, * * * provides for the registration and protection of trade-marks used * * * between the Philippine Islands and the several States of the United States."

It is a principle of general application that local law may not be construed so as to burden interstate or for-

eign commerce. *Brown* v. *Maryland,* 12 Wheat. (25 U. S.) 419, 439, 441-449; *Texas Co.* v. *Brown,* 258 U. S. 466, 476, 477; *Sonneborn* v. *Cureton,* 262 U. S. 506; *Howe Machine Co.* v. *Gage,* 100 U. S. 676, 677-679; *Welton* v. *Missouri,* 91 U. S. 275, 278-283; *Leisy* v. *Hardin,* 135 U. S. 100, 110-125. This principle particularly applies to commerce with the Islands, which in a peculiar way is under the control and care of the Congress.

> "The power which insures the uniformity of commercial regulations must cover the property which is transported as an article of commerce from hostile or interfering legislation, until it has mingled with and become a part of the general property of the country, and subjected like it to similar protection, and to no greater burdens. If at any time before it has thus become incorporated into the mass of property of the state or nation, it can be subjected to any restrictions by State legislation, the object of investing the control in Congress may be entirely defeated. * * * It is sufficient to hold now that the commercial power continues until the commodity has ceased to be the subject of discriminating legislation by reason of its foreign character. That power protects it, even after it has entered the State, from any burdens imposed by reason of its foreign origin."
>
> *Welton* v. *Missouri,* 91 U. S. 275, 281-282.

282.

> "* * * that power [to regulate commerce] was * * * not to be stopped at the external boundary of a State, but must be capable of entering its interior; *that the right to sell any article imported was an inseparable incident to the right to import it.*" (Italics supplied.)
>
> *Leisy* v. *Hardin, supra,* 135 U. S. 100, 111.

> "What can be the use of the contract, what does the importer purchase, if he does not purchase the privilege to sell?
>
> What would be the language of a foreign government, which should be informed that its merchants, after importing according to law, were forbidden to sell the merchandise imported. * * * Such a state of things would break up commerce."
>
> *Brown* v. *Maryland, supra,* 12 Wheat. (25 U. S.) 419, 447 (Marshall, C. J.).

The law governing goods shipped in interstate commerce is settled, and the extent to which such commerce may be interfered with by means of local statutes is illustrated by many decisions.*

Various cases arising under the labeling provisions of the Pure Food Law are in point, as, for instance, the "Karo Corn Syrup Case" (*McDermott* v. *Wisconsin, supra,* 228 U. S. 115). That case involved the validity of a statute of Wisconsin prescribing a method of labeling cans containing syrup at variance with the labeling requirements of the Federal Pure Food Law. The

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*For instance, as to license taxes on pedlars, *Welton* v. *Missouri,* 91 U. S. 275, 281; inspection of animals before slaughter for meat, *Minnesota* v. *Barber,* 136 U. S. 313, 318-321; *Brimmer* v. *Rebman,* 138 U. S. 78, 81-84; inspection of flour brought in from other States, *Voight* v. *Wright,* 141 U. S. 62, 66-67; license tax on liquor sellers not residents of the State, *Walling* v. *Michigan,* 116 U. S. 446, 455; wharfage taxes, *Guy* v. *Baltimore,* 100 U. S. 434, 443; inspection of oysters, *Foote* v. *Maryland,* 232 U. S. 494, 507-508; driving in cattle from other States, *Railroad* v. *Husen,* 95 U. S. 465, 469 *et seq.;* taxes on passengers or on agencies selling railroad or steamship tickets, *Henderson* v. *Mayor of New York,* 92 U. S. 259, 265; *People* v. *Cie. Gen. Transatlantique,* 107 U. S. 59, 63; *McCall* v. *California,* 136 U. S. 104, 107; *Texas Transport Co.* v. *New Orleans,* 264 U. S. 150, 153; *Di Santo* v. *Pennsylvania,* 273 U. S. 34, 36-37; interstate travel in busses, *Buck* v. *Kuykendall,* 267 U. S. 307, 314-317; *Bush Co.* v. *Maloy,* 267 U. S. 317, 324-325; *Sprout* v. *South Bend,* 277 U. S. 183, 185-186, 190; interstate sales of electricity and electric power, *Public Utilities Comm. of R. I.* v. *Attleboro Co.,* 273 U. S. 83; transportation of natural gas, *East Ohio Gas Co.* v. *Tax Comm. of Ohio,* 283 U. S. 465, 470, 472; regulation of sales of stock feeds in interstate commerce, *Savage* v. *Jones,* 225 U. S. 501, 520 *et seq.;* labeling of articles sold in interstate commerce, *McDermott* v. *Wisconsin,* 228 U. S. 115, 129-134.

complainants, sending their "Karo Corn Syrup" into Wisconsin in interstate commerce, bearing labels approved by federal authorities under the Federal Pure Food Law, were met with the contrary requirements of the local statute. This Court held the local statutes invalid, holding that Congress has the full right not only to regulate interstate commerce, but also to bar from such commerce such articles as it may see fit.

> "The case presents, among other questions, the constitutional question whether the state act permitting the sale of this article only when labeled according to the state law is open to the objection" (pp. 127-128) that "the state act is a wrongful interference with the exclusive power of Congress over interstate commerce" (p. 127). Since the Federal Pure Food Act prohibits shipment in interstate commerce of articles *"misbranded within the meaning of the act"* (p. 129), the State cannot require a different and inconsistent form of label; and "to permit such regulation * * * is to permit a State to discredit and burden legitimate Federal regulations of interstate commerce" (p. 133).

The principles underlying that decision seem analogous to those applicable to Section 16 of the Trade-Mark Act of 1905, giving protection in interstate commerce to the holder of the federally registered trade-mark.

POINT II.

The Court below holds that the Act of 1905 does not extend to the Islands. By so doing, it nullifies (so far as trade relations with the Islands go) registration under this Act.

The Court of First Instance held that the law of 1905 is not in force in the Islands. It stated:

> "In view of the foregoing, it may be concluded that the aforesaid Act of Congress of the United States of February 20, 1905, regarding trademarks and patents has not been extended or made applicable to the Philippine Islands" (R. 216).

The Insular Supreme Court affirmed (R. 278-286). In so holding, the Court of First Instance placed its decision upon the ground that:

> "In Section 1 of the Philippine Act, Act of Congress of July 1, 1902, it is provided that the provisions contained in Section 1891 of the Revised Statutes of 1878 shall not be applicable to the Philippine Islands. From this rule, it may be clearly inferred that the denomination 'The United States' should not be understood as including Philippine territory * * *" (R. 213).

Section 1891 of the Revised Statutes of 1878, referred to above, provides that:

> "The Constitution and all laws of the United States which are not locally inapplicable shall have the same force and effect within all the organized territories, and in every territory hereafter organized as elsewhere within the United States."

The Court cites an opinion of the Attorney General (32 Ops. Attys. Gen. 550; October 17, 1925) to the effect that the Narcotic Drugs Act of 1922 did not extend to the Philippine Islands, because those Islands were not specifically mentioned.

But the Insular Court, in so applying to the case at bar the reasoning of the Attorney General as to the Narcotic Drugs Act of 1922, overlooked two distinguishing features:

(1) The Federal Trade-Mark Act of 1905 was enacted *before* the "Jones Law" of 1916, whereas the Narcotic Drugs Act of 1922 was enacted *after* the passage of the "Jones Law." Consequently the provision of Section 5 of the "Jones Law," that the statutory laws of the United States *"hereafter enacted"* shall not apply to the Islands, "except when they specifically so provide" applies, of course, directly to the Narcotic Act of 1922; *but does not affect the Trade-Mark Law of 1905, enacted eleven years before the passage of the "Jones Law."*

(2) The Court also—*particularly in dismissing petitioner's cross-action for want of jurisdiction* (R. 216)—ignored the provision of Section 26 of the 1909 Tariff Act for the Philippines (Appendix, p. 14), *which expressly confers upon the Philippine courts, in actions arising under the Trade-Mark Act of 1905, the same jurisdiction as is conferred upon the Federal Courts in the continental United States by Section 17 of the Federal Trade-Mark Act,* thereby expressly recognizing and providing for the application of the Trade-Mark Act of 1905 to the Philippine Islands. And this jurisdiction

is continued under the "Jones Law," which provides (Sec. 26):

> "The Supreme Court and the courts of first instance of the Philippine Islands shall possess and exercise jurisdiction *as heretofore provided* and such additional jurisdiction as shall hereafter be prescribed by law." (Italics supplied.)

This provision is specifically referred to in the concluding paragraph of Section 14 of Act No. 666, wherein the Philippine Legislature confers upon the Philippine courts, for the purposes of that Section 14, jurisdiction identical with the jurisdiction conferred upon them by Congress under the Tariff Act of 1909.

The Attorney General of the United States held in 1909 that the Trade-Mark Act of February 20, 1905, extends to the Philippines, because of its provisions extending it to "all territory which is under the jurisdiction and control of the United States" (27 Ops. Attys. Gen. 623, 624; September 24, 1909).

And the Treasury Department has consistently so held (Customs Regulations of 1908, Art. 325; Appendix, p. 18).

The Customs Regulations published by the Insular Government likewise recognize the Federal Act as in force in the Islands, and state (Customs Administrative Order No. 194, January 13, 1926, Par. I; Appendix, p. 17) that the local law, Act No. 666, as amended,

> "contains the rules and regulations of the government of the Philippine Islands relative to property in *domestic* trade-marks and trade-names and the protection to be afforded the owners thereof, while the Act of Congress of February 20, 1905, as amended, provides for

> the registration and protection of trade-marks used in connection with *foreign* nations or between the Philippine Islands and the several States of the United States."

It is submitted, therefore, that the Trade-Mark Act of 1905 is in force in the Philippine Islands, and petitioner's registrations ran to the Philippine Islands and were in effect registrations in the Philippine Islands, antedating Heacock's registration. Congress is the sole source of law in the Philippine Islands, and by making the Trade-Mark Act of 1905 applicable to those Islands, it provided a method of registering marks used in commerce between the Islands and the United States. The local Trade-Mark Act continued in effect only for the purpose of registering marks for use in local business. The situation is different from one which might arise in one of the States, where a separate legislative sovereignty exists and where the Congress has only those powers which are granted to it by the States through the Constitution. In dealing with the Islands, the power of Congress is plenary.

POINT III.

The Heacock registration is invalid on its face because it is a registration of a personal surname.

The Insular Courts erred in holding that a personal name such as ROGERS, standing alone and not distinctively written, nor combined with other distinctive matter, is registrable as a trade-mark under Act No. 666, so as to debar persons rightfully entitled to use that name from so using it.

Act No. 666 is a reduction to statutory form of well settled principles of American and English trade-mark law.

Spinner & Co. v. *Neuss Hesslein Corp.*, 28 Phil. Off. Gaz. 1939 (January 13, 1930), p. 1941:

> "The law governing trade-mark rights as well as unfair competition in this jurisdiction is found in Act No. 666 of the Philippine Commission, which is a reduction to statutory form of the jurisprudence developed by the courts of England and the United States in connection with the subjects mentioned; and to the summary of substantive law expressed in the statute are added the provisions relative to the registration of trade-marks."

Dy Buncio v. *Tan Tiao Bok*, 42 Phil. Rep. 190 (1921). This was an action for unfair competition. Citing Section 7 of Act No. 666, the Court said (p. 194):

> "The matter here quoted is apparently merely an enactment into law of a doctrine previously elaborated by the courts of equity of England and America in connection with the subject of unfair competition; and for all practical purposes the result would be about the same whether we proceed under the statutory definition of unfair competition or adopt the decided cases as supplying the criteria by which to be guided."

Both this Court and the Philippine Court frequently have held that in interpreting and applying Philippine statutes derived from American and English law, the courts will rely upon the theory and precedents of Anglo-American common law. *Kepner* v. *United States*, 195 U. S. 100, 124 (1904); *Serra* v. *Mortiga*, 204 U.

S. 470, 474 (1906); *United States* v. *Cuna,* 12 Phil. Rep. 241 (1908); *Alzua et al.* v. *Johnson,* 21 Phil. Rep. 308, 331 (1912), aff'd 231 U. S. 106; *United States* v. *DeGuzman,* 30 Phil. Rep. 416, 419 (1915); *United States* v. *Abiog and Abiog,* 37 Phil. Rep. 137, 141 (1917); *Cuyugan* v. *Santos,* 34 Phil. Rep. 100, 106 (1916).

In *Re Shoop,* 41 Phil. Rep. 213 (1920), Malcolm, J., discusses at length the basis of the Philippine Islands and its relation to Spanish law on the one hand and Anglo-American law on the other:

> "The extent of the English or the Anglo-American common law here has not been definitely decided by this court. But when the subject has been referred to by this court there has been a striking similarity to the quotations from the American decisions above cited with reference to the English common law" (citing *Alzua* v. *Johnson,* 21 Phil. Rep. 308; *United States* v. *DeGuzman,* 30 Phil. Rep. 416, and *United States* v. *Abiog and Abiog,* 37 Phil. Rep. 137) (p. 222).
>
> "At this juncture, three years after the last quoted comment, the influence of English and American jurisprudence can be emphasized even more strongly. A survey of recent cases in the Philippine reports, and particularly those of the last few years, shows an increasing reliance upon English and American authorities in the formation of what may be termed a Philippine common law as supplemental to the statute law of this jurisdiction. An analysis will show that a great preponderance of the jurisprudence of this jurisdiction is based upon Anglo-American case law precedents, exclusively in applying those statutory laws which have been enacted since the change of sovereignty and which conform more

> or less to American statutes, and to a large extent in applying and expanding the remnants of the Spanish codes and written laws" (p. 225).

After citing cases involving a variety of subjects, including trade-marks and unfair competition, Justice Malcolm says (p. 236):

> "From the foregoing selection of the more recent and typical cases, it appears how broad is the scope of the use of Anglo-American authorities and precedents in the field of law subjects affected by American derived legislation. In the application of these statutes in the many cases which come before the court, there is bound to be developed a substantial common law. There is no question that this exists. We are merely concerned with its extent and source."

In concluding, he says (p. 254):

> "We may summarize our conclusions as follows: (1) The Philippine Islands is an unorganized territory of the United States under a civil government established by the Congress. (2) In interpreting and applying the bulk of the written laws of this jurisdiction and in rendering its decisions in cases not covered by the letter of the written law, this court relies upon the theories and precedents of Anglo-American cases, subject to the limited exception of those instances where the remnants of the Spanish written law present well defined civil law theories and of the few cases where such precedents are inconsistent with local customs and institutions. (3) The jurisprudence of this jurisdiction is based upon the English common law in its present day form of Anglo-American common law to an almost exclusive extent. * * *"

Cases involving trade-marks and unfair competition cited by Justice Malcolm to illustrate this application of common law principles to Philippine statutory law are *Ubeda* v. *Zialcita,* 226 U. S. 452 (1913); *Clarke* v. *Manila Candy Co.,* 36 Phil. Rep. 100, and *Alhambra Cigar* v. *Compania General,* 35 Phil. Rep. 73.

Alzua et al. v. *Johnson,* 21 Phil. Rep. 308, 331, 333:

> "* * * while it is true that the body of common law as known to Anglo-American jurisprudence is not in force in these Islands * * * nevertheless many of the rules, principles, and doctrines of the common law have, to all intents and purposes, been imported into this jurisdiction, as a result of the enactment of new laws and the organization and establishment of new institutions by the Congress of the United States, or under its authority; for it will be found that many of these laws can only be construed and applied with aid of the common law from which they are derived, and that to breathe the breath of life into many of the institutions introduced in these Islands under American sovereignty recourse must be had to the rules, principles, and doctrines of the common law under whose protecting aegis the prototypes of these institutions had their birth. * * * And it is safe to say that in every volume of the Philippine Reports, numbers of cases may be cited wherein recourse has been had to the rules, principles, and doctrines of the common law in ascertaining the true meaning and scope of the legislation enacted in and for the Philippine Islands since they passed under American sovereignty."

The very decisions cited by the Court below hold that a personal name standing by itself and not in any

distinctive form or combination is not susceptible of exclusive appropriation or registration so as to debar others rightfully entitled to its use (R. 218-243). The Court of First Instance cited *International Silver Co.* v. *Simeon L. & George. H. Rogers Co. et al.*, 110 Fed. 955, 956, 959; *International Silver Co.* v. *Rogers*, 67 Atl. 105, 106, 107; *Henderson* v. *Peter Henderson & Co.*, 9 Fed. (2nd) 787, 788, 789, 790; *Andrew Jergens Co.* v. *Bonded Products Corporation*, 13 Fed. (2nd) 417, 423-424; *Coty, Inc.* v. *Parfums de Grande Luxe*, 298 Fed. 865, 866-867, 869, 870, 871, 873-876, 877-878; *Borden Ice Cream Co.* v. *Borden's Condensed Milk Co.*, 201 Fed. 510, 513-514; *Wm. Rogers Mfg. Co.* v. *Rogers & Spurr Mfg. Co.*, 11 Fed. 495, 499-500.

Coty, Inc. v. *Parfums de Grande Luxe*, 298 Fed. 865, 874 (2nd Cir., 1924; R. 235-236):

> "It is well-settled law that the mere name of an individual cannot become a valid technical trade-mark as against others bearing the same name. In Brown Chemical Co. v. Meyer, 139 U. S. 540, 11 Sup. Ct. 625, 35 L. Ed. 247, the Supreme Court declared that it was hardly necessary to say that an ordinary surname cannot be appropriated as a trade-mark by any one person as against others of the same name, who are using it for a legitimate purpose. In that case Mr. Justice Brown, who was writing for the court, said:
>
> 'A man's name is his own property, and he has the same right to its use and enjoyment as he has to that of any other species of property. If such use be a reasonable, honest, and fair exercise of such right, he is no more liable for the incidental damage he may do a rival

> in trade than he would be for injury to his neighbor's property by the smoke issuing from his chimney, or for the fall of his neighbor's house by reason of necessary excavations upon his own land. These and similar instances are cases of damnum absque injuria.'
>
> And see McLean v. Fleming, 96 U. S. 245, 24 L. Ed. 828; Singer Manufacturing Co. v. June Manufacturing Co., 163 U. S. 169, 16 Sup. Ct. 1002, 41 L. Ed. 118; Elgin National Watch Co. v. Illinois Watch Case Co., 179 U. S. 665, 21 Sup. Ct. 270, 45 L. Ed. 365; Howe Scale Co. v. Wyckoff, Seamans & Benedict, 198 U. S. 118, 134, 25 Sup. Ct. 609, 49 L. Ed. 972; Stix, Baer & Fuller Dry Goods Co. v. American Piano Co., 211 Fed. 271, 127 C. C. A. 639; William Rogers Manufacturing Co. v. Simpson, 54 Conn. 527, 9 Atl. 395."

The Circuit Court of Appeals, in *Andrew Jergens* v. *Bonded Products Corporation,* 21 Fed. (2nd) 419 (affirming the decree in *Andrew Jergens Co.* v. *Bonded Products Corporation,* 13 Fed. (2nd) 417; R. 230), approved the following language of Judge Morris in another case involving this particular trade-mark, i.e., *Andrew Jergens* v. *Woodbury,* 273 Fed. 952, 966:

> "It cannot be denied that the evidence discloses that some confusion exists in the public mind as to the origin of the articles of the respective parties, yet, so far as I have been able to discover from the evidence, such confusion as does exist arises from the exercise of the legal rights of the respective parties, and not from any wrongful act of the Distributors. Such confusion seems wholly attributable to the fact that two separate and distinct corporations, deriving their title from a common source, have the right

> to use the same mark and name upon different articles and preparations of the same general class, and to the further fact that an individual has, subject to certain conditions (observed, I think, by the Distributors), the right to use his name in his business, although his surname may have acquired a secondary meaning; and to transfer that business to a corporation bearing his name."

In *Howe Scale Co.* v. *Wyckoff, Seamans & Benedict,* 198 U. S. 118, 135, this Court said:

> "* * * it is well settled that a personal name cannot be exclusively appropriated by anyone as against others have a right to use it; and as the name 'Remington' is an ordinary family surname, it was manifestly incapable of exclusive appropriation as a valid trade-mark, and its registration as such could not in itself give it validity."

Consequently, the conclusion at which the Court of First Instance arrived (R. 244), "having demonstrated by adjudicated decisions that the word 'Rogers' is susceptible of appropriation and registration," is diametrically opposite to the holdings in the very decisions cited by the Court and to decisions of this Court. We believe that under these decisions neither International Silver Company nor its agent, Heacock, was entitled to register the name ROGERS, *simpliciter,* under Act No. 666, nor to use such a registration to debar Wm. A. Rogers, Ltd. from the use of its trade-marks in the Islands.

Under Act No. 666, a trade-mark is a mark which distinguishes goods of one man from those of another (Sec. 1) and registrants under this Act must be "owners of trade-marks or trade-names" (Sec. 11). It has

been an underlying principle of trade-mark law, as indicated by the cases cited above, that a surname by itself is not susceptible of appropriation. Such an appropriation to one person seems against public policy. The evils and injustice which would result from one person obtaining exclusive use of a surname are obvious. We believe that it will not be presumed on such evidence as this record presents, that the Philippine Legislature intended by this Act to provide a different rule in this respect, in the Islands. Instead, we believe that this situation, like that described by Judge Holmes in *Ubeda* v. *Zialcita,* 226 U. S. 452, comes under Section 9 of this Act, one of the provisions of which is that "no action * * * shall be maintained under the provisions of this Act in any case where the violation of the trade-mark or trade-name * * * is against public policy."

POINT IV.

Heacock admits that he owns neither the registration nor the trade-mark registered, but that both, in reality, belong to the Silver Company, which concern is equitably estopped from claiming exclusive rights in this surname.

Heacock's registration was applied for by previous arrangement between it and the Silver Company. Mr. Gaches, president and general manager of the Heacock concern, states:

> "Q. If the International Silver Company should take the representation away from the H. E. Heacock Company, would your company insist upon making its mark 'Rogers' prevail against the International Silver Company?

> * * * A. Since the International Silver Company knew of and consented previously to the registration of that trade mark, we would probably consider it necessary to leave that mark to them" (R. 46).
>
> "Q. You said that the International Silver Company knew that the H. E. Heacock Company had registered or was going to register the mark 'Rogers' in the Philippines. Having this knowledge, has the International Silver Company ever protested or objected to the registration of the mark 'Rogers' by the H. E. Heacock Company in the Philippines? A. No, sir; on the contrary, they knew it and did not protest" (R. 48).

The opinion of the Supreme Court states that

> "such trade-mark was registered with the knowledge, consent and approval of the International Silver Company, in fact [that] it was made for its use and benefit" (R. 290).

If the registration of Heacock should fall into hands unfriendly to the Silver Company, it would be quite as much a menace to its rights as it is to-day to those of Wm. A. Rogers, Ltd.; but the Silver Company controls this registration, and, for this reason, since 1918 has allowed it to stand, and has deliberately profited by the benefits which it obtains from that registration—benefits which it could not obtain for itself.

Such facts as these present a situation, we believe, which renders it inequitable for this judgment in favor of Heacock, in these cases, to stand (*Ubeda* v. *Zialcita*, 226 U. S. 452). It seems to us that the language of Justice Holmes in this case is squarely applicable to this situation. We believe that the Silver Company is estopped, by its acts in connection with this registration,

from claiming any exclusive rights, in the Islands, in the word "Rogers," and from profiting by this registration; and that Heacock, as its agent, is likewise estopped from the use of this registration to the injury of the competitors of the Silver Company. When, in 1918, the Silver Company connived with Heacock to take out this registration, it knew of the trade-marks of Wm. A. Rogers, Ltd., and its use of them. We submit that a court of equity will not allow the Silver Company and Heacock to profit now by this situation to the injury of Wm. A. Rogers, Ltd.

A further illustration of the lack of good faith of Heacock and the Silver Company is found in the fact that the Silver Company advertises its goods in magazines circulating in the Islands, using advertisements that are used by it in the United States, as, for instance, those in the *Saturday Evening Post*. Such advertisements are in the record (R. 156-158). The *Saturday Evening Post* has a substantial circulation in the Islands (R. 52). Other American magazines circulate there (R. 51). By these acts the Silver Company has created a situation in which its goods are advertised in the Islands by it under its "Rogers" trade-marks, and at the same time it is conniving at and profiting by the registration of the word "Rogers" by Heacock, under the sworn claim that the word "Rogers," in the Islands, means, not the Silver Company, but Heacock and no one else:

> "that no other person, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive" (R. 139).

These facts which we submit speak for themselves and require that the judgment below should be vacated.

POINT V.

Heacock's registration is invalid because contrary to the provisions of Section 13 of Act No. 666, which forbids registration of a mark "identical with a registered or known trade-mark owned by another * * * or which so nearly resembles another person's lawful trade-mark or trade name as to be likely to cause confusion."

This section prohibits the registration under Act No. 666 of marks which are identical with or colorably similar to lawful trade-marks of another. If a mark is colorably similar to that used by another, it may not be registered if the applicant *knew* of the existence of that other mark or if such mark was *"registered."* The statute requires good faith on the part of the registrant.

Here, in registering the word "Rogers," Heacock comes within both these classifications and lacks the required good faith. The goods of Wm. A. Rogers, Ltd. were not on sale in the Islands in 1918, but various "Rogers" trade-marks of that concern were registered at that time, under the Act of 1905. These trade-marks were actually known to the International Silver Company, because of litigation between the Silver Company and Wm. A. Rogers, Ltd., involving certain of these marks, and Heacock, as the agent of the Silver Company, will be chargeable with this knowledge at the time he applied to register the word "Rogers" in the Islands.

It may be contended that the word "registered" in the Act applies only to marks registered under Act 666. Such a construction of this language requires explanation of the presence of the proviso in Section 14, which saves the rights of those "having registered a trade-mark under the laws of the United States."

If the Act of 1905 extends to the Islands, as we believe it does, then registration under that Act would be registration within the meaning of Section 13 of Act 666.

POINT VI.

Heacock's registration is invalid because he never applied it to merchandise.

Heacock never manufactured any "Rogers" goods (R. 41-48). The goods are not manufactured specially for him (R. 49). They are "exactly the same articles which the International Silver Company is selling under its trade-marks in the United States, as regards weight, size, etc., * * * the same articles which the International Silver Company of the United States is selling" (R. 49). The Heacock Company has never manufactured any silver article bearing the word "Rogers" (R. 48). There is no evidence that he ever placed the word "Rogers" on any of the goods he sold.

The use of the word "Rogers" on the goods of the Silver Company, on which the Heacock Company depends to support its registration, is thus described by its president: "Q. Has H. E. Heacock Company sold one article marked only Rogers, without any symbol whatever? A. All the silver or plated tableware bears the word 'Rogers' with other symbols or words, as, for instance, 'Rogers Brothers 1847' and 'William H. Rogers Sons 1847' " (R. 47).

Under the Act of 1905, a trade-mark to be registrable must have been applied to the goods (Sec. 1; Appendix, p. 12). In *Hay* v. *Malone*, 273 Fed. 363,

364 (1921), the Court of Appeals of the District of Columbia said:

> "It is unnecessary to pass upon appellant's right to register the word 'Hay-Po' alone, since it does not appear that he has ever used it in trade independent of the other features of the mark as above shown. There must be actual trade-mark use to entitle the owner to registration. Hence appellant must stand or fall upon the actual use of the mark."

Act No. 666 provides for both trade-*marks* (Sec. 1) and trade *names* (Sec. 5), expressly distinguishing between them. As to a trade name, it reads:

> "It is not essential that the trade name should appear on the goods manufactured or dealt in by person owning or using the same."

The language indicates that a trade-*mark* registered thereunder must be one which is "applied and affixed to the goods."

The registration procured by Heacock is for a trade-*mark*, not for a trade *name*.

In the case of Heacock's registration we submit that within the rules of trade-mark law the name "Rogers" was not affixed to the goods of that concern so as to function as a trade-mark. In applying for this registration the president of the Heacock Company stated:

> "a trade-mark for spoons and other flatware, whether nickel, silver plated, or silver, as well as nickel, silver plated and silver goods of all kinds save and except cutlery, of which the following is a description:
>
> The trade-mark consists of the word 'ROGERS'
>
> * * *.

> The trade-mark is *applied* or *affixed* to the goods by stamping or engraving, or applying the same in any other suitable manner to the back, bottom, side, edge or top of the goods wherever convenient, and is also applied by printing upon labels placed upon the packages containing the goods" (R. 138; Ex. G). (Italics supplied.)

We submit this does not state the facts.

Heacock's Use Is Not a Trade-Mark Use.

One of two concerns using composite trade-marks has not the right to appropriate and claim exclusive use of one of the words common to the marks. This is particularly true when that word is in common use, either by the public or by competitors.

In *Planten* v. *Canton Pharmacy Co.*, 33 App. D. C. 268, application for registration of "Black Caps" or "Black Capsules" was denied. The same applicant previously registered a trade-mark consisting of "C & C or Black" with the name "Planten's" above and the word "Capsules" below. The Court pointed out (p. 270) that "Statutory use of the mark is a prerequisite to the right of registration," adding (p. 271):

> "By the passage of the trade-mark act, Congress did not intend to confer upon any dealer the right to register fictitious marks for the purpose of limiting and restricting the field of registration of others. When, therefore, the Commissioner is satisfied that the applicant is attempting to register a particular feature of a registered mark, he should require evidence that the mark of the application has actually been used as a trade-mark. * * * In other words, proof of the use of the words 'Planten's C. & C. or Black

> Capsules,' in a case where those words have been registered as a trade-mark, does not establish the use of the words 'Black Capsules' as a trade-mark, for the words eliminated from the registered mark are, under the prior application, an essential part of that mark."

In *Laughran* v. *Quaker City Chocolate & Confectionery Co.*, 296 Fed. 822, plaintiff's trade-mark was "Quaker Maid" with the representation of a Quaker woman. Defendant's mark was "Quaker City" with the representation of a Quaker man. Judge Wooley said, in the opinion for the Third Circuit Court of Appeals (p. 826):

> "But the unusual thing about the opposition of the defendant is that its complaint does not extend so much to a claimed deceptive similarity between the contesting trade-marks as it does to its claimed right, previously stated, to take out of its trade-marks the catch word 'Quaker' and use it in its business generally—and exclusively. The defendant maintains that it has used the word 'Quaker' disjoined from the word 'City' and has applied it to advertising, wrapping, boxing and selling its candies so long that its candies have become known to the public by this single word and therefore the registration of the plaintiffs' trade-mark of 'Quaker Maid,' though accompanied with the presentation of a Quaker woman, would carry to the trade the idea that the plaintiffs' candies are made by the defendant. This conclusion is only true if the defendant were entitled to the exclusive use of the word 'Quaker.' We cannot see what right it has to appropriate and make claim to the exclusive use of one of several trade-mark words. 'Quaker City,' the name by which the City of Philadelphia is popularly known, is a name freely used by a

> multitude of tradesmen, as an inspection of the telephone directory of the city will abundantly show. The registration of a trade-mark does not give the registrant a monopoly of every word in the trade-mark, howsoever disposed and used."

In *Van Camp Sea Food Co.* v. *Westgage Sea Products Co.*, 28 Fed. (2nd) 957 (C. C. A., 9th Cir.), where the marks of both parties contained the word "Chicken," Judge Dietrich said:

> "the combination as a whole may have validity. But, in view of the considerations just suggested, appellant cannot, as in effect it seeks to do, abandon all but the word 'chicken,' and claim that as its trade-mark. * * * On the point that generally a registered trade-mark is to be considered as an entirety, see John Morrell & Co. v. Hauser Packing Co. (C. C. A.), 20 F. (2d) 713; Ostermoor & Co. v. Rose Spring & Mattress Co., 55 App. D. C. 307, 5 F. (2d) 268; Loughran v. Quaker City, etc. (C. C. A.), 296 F. 822; Beckwith v. Commissioner of Patents, 252 U. S. 538, 40 S. Ct. 414, 64 L. Ed. 705."

Prior to this case, the Ninth Circuit (Judge Dietrich again writing) decided *Morrell* v. *Hauser,* 20 Fed. (2nd) 713, in which it held that where the parties both use marks containing the word "Pride," the word "Pride" itself might not function as a trade-mark of either.

POINT VII.

It is no answer to the above propositions to assert that the Silver Company's goods were sold in the Islands before those of Wm. A. Rogers, Ltd.

The Philippine Islands do not constitute a state. The Islands are a territory belonging to the United States under a civil government established by the Congress.* The use involved here is under the same sovereignty which controls interstate commerce, the same sovereignty which enacted the Trade-Mark Law of 1905, under which the trade-marks we seek to protect are registered. In this sovereignty, in interstate commerce in the continental United States, the marks of the Silver Company and of Wm. A. Rogers, Ltd., which are involved here, are admittedly not infringements of each other. *For years they have been used side by side. The question, therefore, is here presented whether one of these parties, simply because it happened to be the first to occupy the Philippine market with its* ROGERS *marks, with full knowledge of the rights of the other, may make use of the local Act to prevent the exportation to the Islands of goods bearing these registered trade-marks of the other.*

If the decision of the Philippine Supreme Court is sound, then merchants interested in trade with the Islands may pirate trade-marks which are being used and are registered in the United States and thereby exclude the rightful owners of such marks from using them in commerce with the Philippine Islands.

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* *In re Shoop*, 41 Phil. Rep. 213, 254; *Balzac* v. *Porto Rico*, 258 U. S. 298, 304-305; *Springer* v. *Gov't of the Philippine Islands*, 277 U. S. 189, 200-201.

The judgments of the insular courts should be reversed.

Respectfully submitted,

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New York City, February 3, 1932.

APPENDIX.

I.

TRADE-MARK AND TRADE-NAME LAWS OF THE PHILIPPINE ISLANDS

ACT No. 666 OF MARCH 6, 1903, AS AMENDED

An Act defining property in trade-marks and in trade-names and providing for the protection of the same, defining unfair competition and providing remedies against the same, providing registration for trade-marks and trade-names, and defining the effect to be given to registration under the Spanish royal decree of eighteen hundred and eighty-eight relating to the registration of trade-marks and the effect to be given to registration under this Act.

By authority of the United States, be it enacted by the Philippine Commission, that:

SECTION 1. A trade-mark is a name, emblem, sign, or device, employed by any person, firm, or corporation, to designate the goods dealt in or manufactured by such person, firm or corporation, for the purpose of enabling the public to recognize such goods and manufactures, and to distinguish them from the goods and manufactures of others.

SEC. 2. Anyone who produces, or deals in, merchandise of any kind by actual use thereof in trade may appropriate to his exclusive use a trade-mark, not so appropriated by another, to designate the origin or ownership thereof: *Provided,* That a designation or part of a designation which relates only to the name, quality, or description of the merchandise or geographical place of its production or origin can not be the subject of a trade-mark.

SEC. 3. The ownership or possession of a trade-mark, heretofore or hereafter appropriated, as in the foregoing section provided, shall be recognized and protected in the same manner and to the same extent, as are other property rights known to the law. To this end any person entitled to the exclusive use of a trade-mark to designate the origin or ownership of goods he has made or deals in, may recover damages in a civil action from any person who has sold goods of a similar kind, bearing such trade-mark, and the measure of the damages suffered, at the option of the complaining party, shall be either the reasonable profit which the complaining party would have made had the defendant not sold the goods with the trade-mark aforesaid, or the profit which the defendant actually made out of the sale of the goods with the trade-mark, and in cases where actual intent to mislead the public or to defraud the owner of the trade-mark shall be shown, in the discretion of the court, the damages may be doubled. The complaining party, upon proper showing, may have a preliminary injunction, restraining the defendant temporarily from use of the trade-mark pending the hearing, to be granted or dissolved in the manner provided in the Code of Civil Procedure, and such injunction upon final hearing, if the complainant's property in the trade-mark and the defendant's violation thereof shall be fully established, shall be made perpetual, and this injunction shall be part of the judgment for damages to be rendered in the same cause as above provided.

SEC. 4. No action shall be brought for damages for the violation of the rights to use trade-marks defined in the preceding sections nor shall criminal proceedings be entertained as provided in section six of this Act, unless it be first shown that the trade-mark or trade-name alleged to have been violated or which gave rise to the criminal action has been duly registered in the Bureau of Commerce and Industry, in accordance with the provisions of this Act. [*As amended by Act No. 3332, Sec. 1.*]

SEC. 5. A trade-name is the name, device, or mark by which is intended to be distinguished from that of others the business, profession, trade, or occupation in which one may be engaged and in which goods are manufactured or sold to the public, work is done for the public, or professional services are rendered to the public. It is not essential that the trade-name should appear on the goods manufactured or dealt in by person owning or using the same. It is sufficient if the trade-name is used by way of advertisements, signs over the place of business, upon letter heads, and in other ways to furnish to the public a method of distinguishing the business, trade, or occupation of the person owning and using such name. Property in trade-names shall be as fully protected as property in a trade-mark by the civil remedies provided in section three of this Act for the protection of property in trade-marks.

SEC. 6. Any person who, with intent to defraud the public or the owner of a trade-mark or trade-name, shall use the trade-mark of another on his goods offered for sale, or the trade-name of another in his business, occupation, or profession, and any person who, knowing that a trade-mark has been fraudulently used on goods with the intent aforesaid, shall sell such goods or offer the same for sale, and any person who shall knowingly aid or abet another in such fraudulent use of a trade-mark or trade-name, shall be punished by a fine of not exceeding two thousand five hundred dollars, or by imprisonment not exceeding three years, or both, in the discretion of the court. Any person who knowing the purposes for which such trade-mark or trade-name is to be used, and that it is the property of one person, prints, lithographs, or in any way reproduces such trade-mark or trade-name, or a colorable imitation thereof, for another person, to enable that other person fraudulently to use such trade-mark or trade-name in the deception of the public and the defrauding of the real owner of the trade-mark or trade-name, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding eighteen months, or both, in the discretion of the court.

SEC. 7. Any person who in selling his goods shall give them the general appearance of goods of another manufacturer or dealer, either in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer other than the actual manufacturer or dealer, and who clothes the goods with such appearance for the purpose of deceiving the public and defrauding another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose, shall be guilty of unfair competition, and shall be liable to an action for damages, in which the measure shall be the same as that provided for a violation of trade-mark rights, together with discretionary power in the court to impose double damages, if the circumstances call for the same. The injured party may also have a remedy by injunction similar to that provided for in cases of violation of trade-marks. This section applies in cases where the deceitful appearance of the goods, misleading as to origin or ownership, is effected not by means of technical trade-marks, emblems, signs, or devices but by the general appearance of the package containing the goods, or by the devices or words thereon, even though such packages, devices, or words are not by law capable of appropriation as trade-marks; and in order that the action shall lie under this section, actual intent to deceive the public and defraud a competitor shall affirmatively appear on the part of the person sought to be made liable, but such intent may be inferred from similarity in the appearance of the goods as packed or offered for sale to those of the complaining party.

SEC. 8. Any person guilty of unfair competition, as defined in the preceding section, in addition to the civil remedies to which he may be subject, shall also be liable criminally, in case of conviction for the same, to a fine of not exceeding two thousand dollars, or imprisonment not exceeding two years, or both, in the discretion of the court.

SEC. 9. No action, or suit, or criminal prosecution shall be maintained under the provisions of this Act in any case where the violation of the trade-mark or trade-name or the unfair competition complained of has been in any unlawful business, or with respect to any article, trade in which is unlawful, or is against public policy, or in any case where the trade-mark, trade-name, or the indicia of origin, ownership, or manufacture have been used by the complaining and injured party for the purpose of himself deceiving the public with respect to the character of the merchandise sold by him or of the business or profession or occupation carried on by him.

SEC. 10. The use of a registered trade-mark or trade-name by the assignee of the owner of such trade-mark or trade-name shall be lawful and shall be protected under this Act, if such assignment is made of record in the register of the Bureau of Commerce and Industry. [*As amended by Act No. 3332, Sec. 2.*]

SEC. 11. The owners of trade-marks or trade-names domiciled in the Philippine Islands, or the United States, or in any foreign country which by treaty, convention, or law affords similar privileges to the citizens of the United States and of the Philippine Islands, may obtain registration of such trade-marks or trade-names by complying with the following requirements:

First. By causing to be recorded in the Bureau of Commerce and Industry a statement specifying the name, domicile, location, and citizenship of the applicant; the general class or classes of merchandise to which the trade-mark claimed has been appropriated; or in case of a trade-name the description of the business, profession, or occupation it is to distinguish; a description of the trade-mark or trade-name itself, with facsimiles thereof, and a statement of the mode in which the same is applied and affixed to goods, or is to be used in the business, profession, or occupation, and the length of time during which the trade-mark or trade-name has been used. [*As amended by Act No. 1407, Sec. 3(b), and modified by Act No. 2728.*]

Second. By paying to the Bureau of Commerce and Industry the sum of twenty-five dollars in money of the United States and complying with such regulations as may be prescribed by the Director of said Bureau. [*As amended by Act No. 1407, Sec. 3(b), and modified by Act No. 2728.*]

SEC. 12. The application prescribed in the foregoing section must be accompanied by a written declaration verified by the person, or by a member of the firm, or by an officer of the corporation applying, or by the duly authorized attorney or agent of such person, firm, or corporation, to the effect that such party has at the time a right to the use of the trade-mark or trade-name sought to be registered, and that no oher person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; and that the description and facsimiles presented for registry truly represent the trade-mark sought to be registered. [*As amended by Act No. 744, Sec. 4.*]

SEC. 13. The time of the receipt of any such application shall be noted and recorded. But no alleged trade-mark or trade-name shall be registered which is merely the name, quality, or description of the merchandise upon which it is to be used or the geographical place of its production or origin, or which is identical with a registered or known trade-mark owned by another and appropriate to the same class of merchandise, or which so nearly resembles another person's lawful trade-mark or trade-name as to be likely to cause confusion or mistake in the mind of the public, or to deceive purchasers. In an application for registration the Director of the Bureau of Commerce and Industry shall decide the presumptive lawfulness of claim to the alleged trade-mark. [*As amended by Act No. 1407, Sec. 3(b), and modified by Act No. 2728.*]

SEC. 14. No article of imported merchandise which shall copy or simulate the name of any domestic manu-

facture, or manufacturer or trader, or shall copy or simulate a trade-mark or trade-name registered in accordance with the provisions of this Act, or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the Philippine Islands, shall be admitted to entry at any customhouse of the Philippine Islands; and in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trade-mark or trade-name issued in accordance with the provisions of this Act, to be recorded in books which shall be kept for this purpose in the office of the Insular Collector of Customs, under such regulations as the Insular Collector of Customs, with the approval of the Secretary of Finance and Justice, shall prescribe, and may furnish to the office of the Insular Collector of Customs a facsimile of his name, the name of the locality in which his goods are manufactured, and of his registered trade-mark or trade-name; and thereupon the Insular Collector of Customs shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs: *Provided, however,* That this section shall not be construed to affect rights that any person may have acquired by virtue of having registered a trade-mark under the laws of the United States.

In matters arising under this section original jurisdiction is hereby conferred upon the Court of First Instance, and appellate jurisdiction upon the Supreme Court, identical with the jurisdiction conferred upon such courts by section twenty-six of the Act of Congress approved August fifth, nineteen hundred and nine, entitled "An Act to raise revenue for the Philippine Islands, and for other purposes." [*As amended by Act No. 2460.*]

SEC. 15. Certificates of registration of trade-marks and trade-names under the Spanish sovereignty in these Islands unannulled, under the royal decree of eighteen hundred and eighty-eight, shall be conclusive evidence of the ex-

clusive right of ownership of such trade-marks or trade-names in respect to the goods and articles of merchandise or the business, profession, or occupation to which they by the terms of the registration apply. [*As amended by Act No. 2460.*]

SEC. 16. Certificates of registry of trade-marks and trade-names, shall be issued in the name of the Insular Government of the Philippine Archipelago, under the seal of the Bureau of Commerce and Industry and shall be signed by the Director of said Bureau and a record thereof, together with printed copies of the specific trade-marks or trade-names, shall be kept by him in books for that purpose. Certified copies of trade-marks or trade-names and of statements and declaration filed therewith, and original certificates of registry, shall be evidence in any suit in which such trade-marks or trade-names shall be brought into controversy. But registration of trade-marks and trade-names under this Act shall only be *prima facie* evidence of the exclusive right by the person securing the registration to use the same. [*As amended by Act No. 803, Sec. 1; Act No. 1407, Sec. 3(b); Act No. 2460 and modified by Act No. 2728.*]

SEC. 17. A certificate of registry shall remain in force for thirty years from its date, except in cases where the trade-mark is claimed for, and applied to, articles not manufactured in this country, and in which it receives protection under the laws of a foreign country for a shorter period, in which case it shall cease to have any force in this country by virtue of this Act at the time that such trade-mark ceases to be exclusive property elsewhere. At any time during the six months prior to the expiration of the term of thirty years, such registration may be renewed on the same terms and for a like period. [*As amended by Act No. 2460.*]

SEC. 18. Applicants for registration under this Act shall be credited for any fee or part of a fee heretofore paid into the Bureau of Commerce and Industry with intent to procure protection for the same trade-mark or

trade-name. [*As amended by Act No. 1407, Sec. 3(b); Act No. 2460 and modified by Act No. 2728.*]

SEC. 19. Any person who shall procure the registry of a trade-mark, or of himself as the owner of a trade-mark or trade-name, or an entry respecting a trade-mark or trade-name, in the Bureau of Commerce and Industry, by a false or fraudulent representation or declaration, orally or in writing, or by any fraudulent means, or any person who shall aid or abet such fraudulent procuring of registry, shall be liable to pay any damages sustained in consequence thereof to the injured party; and shall further be liable to criminal prosecution, and upon conviction shall be punished by a fine of not more than one thousand dollars, or imprisonment for not more than one year and one day, or both, in the discretion of the court. [*As amended by Act No. 1407, Sec. 3(b); Act No. 2460 and modified by Act No. 2728.*]

SEC. 20. The Director of the Bureau of Commerce and Industry is hereby authorized to make the necessary rules and regulations for the purposes of this Act and likewise to prescribe forms for the transfer of the right to use trade-marks or trade-names and for recording such transfers in his office. He is also authorized to establish classes of merchandise for the purpose of the registration of trade-marks and to determine the particular description of the articles included in each class. An application for registration of a trade-mark shall be registered only for one class of articles and only for the particular description of articles mentioned in such application: *Provided*, That such description of articles shall be comprised in only one class. [*As amended by Act No. 1407, Sec. 3(b); Act No. 2460; Act No. 3332, Sec. 3; and modified by Act No. 2728.*]

SEC. 21. The citizens and residents of this country wishing the protection of trade-marks in any foreign country, the laws of which require registration here as a condition precedent to getting such protection there, may register their trade-marks for that purpose, as is above

allowed to foreigners, and have certificate thereof from the Director of the Bureau of Commerce and Industry upon payment of the same fee as that required by section eleven. [*As amended by Act No. 1407, Sec. 3(b); Act No. 2460 and modified by Act No. 2728.*]

SEC. 22. All the duties appertaining to the Bureau of Patents, Copyrights, and Trade-marks are hereby devolved upon the Director of the Bureau of Commerce and Industry. [*As amended by Act No. 1407, Sec. 3(b); Act No. 2460 and modified by Act No. 2728.*]

SEC. 23. The royal decree of eighteen hundred and eighty-eight as to the registration of trade-marks, as continued in force by military order, is hereby repealed. [*As amended by Act No. 2460.*]

SEC. 24. This Act shall take effect on its passage. [*As amended by Act No. 2460.*]

II.

ACT NO. 2460 OF FEBRUARY 4, 1915.

An Act to amend Act numbered Six hundred and sixty-six, entitled "An Act defining property in trade-marks and in trade-names and providing for the protection of the same, defining unfair competition and providing remedies against the same, providing registration for trade-marks and trade-names, and defining the effect to be given to registration under the Spanish royal decree of eighteen hundred and eighty-eight relating to the registration of trade-marks, and the effect to be given to registration under this Act," by forbidding the importation of certain merchandise, and for other purposes.

By authority of the United States, be it enacted by the Philippine Legislature, that:

SECTION 1. Act Numbered Six hundred and sixty-six, entitled "An Act defining property in trade-marks and in

trade-names and providing for the protection of the same, defining unfair competition and providing remedies against the same, providing registration for trade-marks and trade-names, and defining the effect to be given to registration under the Spanish royal decree of eighteen hundred and eighty-eight relating to the registration of trade-marks, and the effect to be given to registration under this Act," is hereby amended by inserting the following as section fourteen, changing the present section numbers fourteen to twenty-three, inclusive, to fifteen to twenty-four, inclusive:

"SEC. 14. No article of imported merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer or trader, or shall copy or simulate a trade-mark or trade-name registered in accordance with the provisions of this Act, or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the Philippine Islands, shall be admitted to entry at any customhouse of the Philippine Islands; and in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trade-mark or trade-name issued in accordance with the provisions of this Act, to be recorded in books which shall be kept for this purpose in the office of the Insular Collector of Customs, under such regulations as the Insular Collector of Customs, with the approval of the Secretary of Finance and Justice, shall prescribe, and may furnish to the office of the Insular Collector of Customs a facsimile of his name, the name of the locality in which his goods are manufactured, and of his registered trade-mark or trade-name; and thereupon the Insular Collector of Customs shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs: *Provided, however,* That this section shall not be construed to affect rights that any person may have

acquired by virtue of having registered a trade-mark under the laws of the United States.

"In matters arising under this section original jurisdiction is hereby conferred upon the Court of First Instance, and appellate juisdiction upon the Supreme Court, identical with the jurisdiction conferred upon such courts by section twenty-six of the Act of Congress approved August fifth, nineteen hundred and nine, entitled 'An Act to raise revenue for the Philippine Islands, and for other purposes.'"

III.

TRADE-MARK LAW OF THE UNITED STATES

ACT OF FEBRUARY 20, 1905, C. 592, 33 STAT. 724-731
(AS AMENDED)

SECTION 1. The owner of a trade-mark used in commerce with foreign nations, or among the several States, or with Indian tribes, providing such owner shall be domiciled within the territory of the United States, or resides or is located in any foreign country which, by treaty, convention, or law, affords similar privileges to the citizens of the United States, may obtain registration for such trade-mark by complying with the following requirements: * * *

SEC. 5. No mark by which the goods of the owner of the mark may be distinguished from other goods of the same class shall be refused registration as a trade-mark on account of the nature of such mark unless such mark—

(a) Consists of or comprises immoral or scandalous matter.

(b) Consists of or comprises the flag * * *:

Provided, That no mark which consists merely in the name of an individual, firm, corporation, or association not written, printed, impressed, or woven in some particular or

distinctive manner, or in association with a portrait of the individual, * * * shall be registered under the terms of this Act.

SEC. 16. The registration of a trade-mark under the provisions of this Act shall be prima facie evidence of ownership. Any person who shall, without the consent of the owner thereof, reproduce, counterfeit, copy, or colorably imitate any such trade-mark * * * and shall use or shall have used, such reproduction, counterfeit, copy or colorable imitation in commerce among the several States, or with a foreign nation, or with the Indian tribes, shall be liable to an action for damages therefor at the suit of the owner thereof; * * *

SEC. 17. The circuit and territorial courts of the United States and the Supreme Court of the District of Columbia shall have original jurisdiction, and the circuit courts of appeal of the United States and the court of appeals of the District of Columbia shall have appellate jurisdiction of all suits at law or in equity respecting trade-marks registered in accordance with the provisions of this act arising under the present act, without regard to the amount in controversy.

SEC. 27. No article of imported merchandise which shall copy or simulate the name of any domestic manufacture, or manufacturer, or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trade-mark registered in accordance with the provisions of this Act * * * shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States

in respect to trade-marks and commercial names, may require his name and residence, and the name of the locality in which his goods are manufactured, and a copy of the certificate of registration of his trade-mark, * * * to be recorded in books which shall be kept for the purpose in the Department of the Treasury, * * * and may furnish to the department facsimiles of his name, * * * or of his registered trade-mark; and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs.

SEC. 29. In construing this Act the following rules must be observed, except where the contrary intent is plainly apparent from the context thereof: The United States includes and embraces all territory which is under the jurisdiction and control of the United States. The word "States" includes and embraces the District of Columbia, the Territories of the United States, and such other territory as shall be under the jurisdiction and control of the United States.

IV.

TARIFF ACT FOR THE PHILIPPINE ISLANDS

ACT OF CONGRESS OF AUGUST 5, 1909 (C. 8, 36 STAT. 130-177).

SEC. 26. That original jurisdiction in all cases arising in the Philippine Islands is hereby conferred upon the courts of first instance of the Philippine Islands and appellate jurisdiction upon the Supreme Court of the Philippine Islands in matters arising under the Act of Congress approved February 20, 1905, entitled "An Act to authorize the registration of trade-marks used in commerce with foreign nations or aomng the other States or with Indian tribes and to protect the same," identical with the jurisdiction conferred upon courts of the United States by section Seventeen of said Act.

V.

"THE JONES LAW"

AUTONOMY ACT

THE ORGANIC ACT FOR THE PHILIPPINE ISLANDS
(Act of Congress of August 29, 1916, 39 Stat. 545)

C. 416—An Act to declare the purpose of the people of the United States as to the future political status of the people of the Philippine Islands, and to provide a more autonomous government for those islands.

SEC. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this Act.

SEC. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States.

SEC. 8. That general legislative powers, except as otherwise herein provided, is granted to the Philippine Legislature, authorized by this Act.

SEC. 10. That while this Act provides that the Philippine government shall have the authority to enact a tariff law the trade relations between the islands and the United States shall continue to be governed exclusively by laws of the Congress of the United States: *Provided*, That tariff acts or acts amendatory to the tariff of the Philippine Islands shall not become law until they shall receive the approval of the President of the United States, nor shall any act of the Philippine Legislature affecting immi-

gration or the currency or coinage laws of the Philippines become a law until it has been approved by the President of the United States: *Provided further,* That the President shall approve or disapprove any act mentioned in the foregoing proviso within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved.

SEC. 19. That all laws enacted by the Philippine Legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same. * * *

SEC. 26. That the supreme court and the courts of first instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law. The municipal courts of said islands shall possess and exercise jurisdiction as now provided by law, subject in all matters to such alteration and amendment as may be hereafter enacted by law; and the chief justice and associate justices of the supreme court shall hereafter be appointed by the President, by and with the advice and consent of the Senate of the United States. The judges of the court of first instance shall be appointed by the Governor General, by and with the advice and consent of the Philippine Senate: *Provided,* That the admiralty jurisdiction of the supreme court and courts of first instance shall not be changed except by Act of Congress. That in all cases pending under the operation of existing laws, both criminal and civil, the jurisdiction shall continue until final judgment and determination.

VI.

CUSTOMS REGULATIONS GOVERNING THE EXCLUSION OF IMPORTED PRODUCTS BEARING MARKS OR NAMES THAT IMITATE REGISTERED TRADE-MARKS OR TRADE-NAMES

(Customs Administrative Order No. 194)

January 13, 1926

Trade-marks and Trade-names; Laws relative thereto and regulations governing the exclusion of imported products bearing marks or names that imitate registered trade-marks or trade-names; Customs Administrative Circular No. 730, superseded.

PARAGRAPH 1. Act No. 666 of the Philippine Legislature, as amended by Acts Nos. 744, 803, and 2460, contains the rules and regulations of the Government of the Philippine Islands relative to property in *domestic* trade-marks and trade-names and the protection to be afforded the owners thereof, while the Act of Congress of February 20, 1905, as amended, provides for the registration and protection of trade-marks used in connection with *foreign* nations or between the Philippine Islands and the several States of the United States.

(Published in official publication of the Philippine Government, 1927, entitled "Laws, Rules, and Regulations governing the registration of trade-marks and trade-names in the Philippine Islands"; quoted, R. 400-401.)

VII.

CUSTOMS REGULATIONS OF 1908.

(United States Treasury Department, Rules and Regulations, Vol. 3, p. 159)

ART. 325. Insular territory.—The provisions of the act of February 20, 1905, apply to Porto Rico, the Philippine Islands, Hawaii, and any other territory under the jurisdiction and control of the United States.

VIII.

CERTIFICATES OF REGISTRATION OF TRADE-MARKS OF WM. A. ROGERS, LTD.

UNITED STATES PATENT OFFICE.

WM. A. ROGERS, LIMITED, OF NEW YORK AND NIAGARA FALLS, NEW YORK.

TRADE-MARK FOR SILVER-PLATED FLAT AND HOLLOW WARE AND CUTLERY.

,079.

Registered May 19, 1914.

Application filed October 2, 1913. Serial No. 75,177.

STATEMENT.

ll whom it may concern:

e it known that WM. A. ROGERS, LIM-, a corporation duly organized and exist- under and by virtue of the laws of Province of Ontario, Dominion of Can- and located in the city of New York, y of New York, in the State of New , doing business at No. 12 Warren , in said city of New York, and hav- a manufacturing establishment at Niag- Falls, county of Niagara, State of New , has adopted for its use the trade- shown in the accompanying drawing, silver-plated flat and hollow ware and ery, in Class No. 28, Jewelry and pre- metal ware.

The trade-mark has been continuously in the business of said corporation July, 1901.

Applicant is the owner of the registered trade-marks No. 36,491, May 23, 1901; No. 36,492, May 28, 1901; No. 59,996, January 8, 1907; No. 68,369, March 31, 1908; No. 77,597, April 19, 1910; and No. 77,598, April 19, 1910.

The trade-mark is usually displayed upon the goods themselves by stamping it thereon or otherwise associating it therewith, on packages and cases containing the goods, on labels used in connection therewith, and by otherwise associating it with the manufacture, use and sale of said goods.

[L. S.] WM. A. ROGERS, LIMITED,
By E. G. BAKER,
Secretary.

1881 (R) ROGERS (R)

DECLARATION.

vince of Ontario, county of York ss.:
Edwin Gennon Baker, being duly sworn, ses and says that he is secretary of corporation, the applicant named in foregoing statement; that he believes the foregoing statement is true; that he believes corporation is the owner of the trade- sought to be registered; that no other , firm, corporation or association, to best of his knowledge and belief, has right to use said trade-mark, either form or in any such near resemblance as might be calculated that said trade-mark is used by ...among the United States and be- ... foreign nations, ... Canada, Italy and Cuba; that the drawing presented truly represents the trade-mark sought to be registered; that the facsimiles show the trade-mark as actually used upon the goods; that one of the manufacturing establishments of said corporation is located at Niagara Falls, county of Niagara, State of New York, and that the goods claimed in this application are the products of such establishment and of other manufacturing establishments of said corporation within the United States.

E. G. BAKER.

Subscribed and sworn to before me, a notary public, this 26th day of September, 1913.

[L. S.] W. R. MORLOCK,
Notary Public.

UNITED STATES PATENT OFFICE.

WM. A. ROGERS, LIMITED, OF NEW YORK AND NIAGARA FALLS, NEW YORK.

TRADE-MARK FOR SILVER-PLATED FLAT AND HOLLOW WARE AND CUTLERY.

Registered No. 44,171.

Application filed October 3, 1910. Serial No. 74,171.

DECLARATION.

Be it known that Wm. A. Rogers, Limited, a corporation duly organized and existing under and by virtue of the laws of the Province of Ontario, Dominion of Canada, and located in the city of New York, in the State of New York, in the place of business at No. 1 Barren Island, and city of New York and State aforesaid, manufacturing, establishment at Niagara Falls, county of Niagara, State of New York, has adopted for its use the trade-mark shown in the accompanying drawing, for silver-plated flat and hollow ware and cutlery, in Class No. 35, Jewelry and precious metal ware.

That said trade-mark has been continuously used in the business of said corporation since July, 1901.

1847 ROGERS

DESCRIPTION.

Be it known that the said corporation, by its president, Frederick Rogers, being duly sworn, deposes and says that he is secretary of said corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation or association, to the knowledge and belief, has the right to use the said trade-mark, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the said trade-mark is used by said corporation in connection with the goods of the United States and foreign nations and principally with Australia, Italy and

Subscribed and sworn to before me, a notary public, this 29th day of September, 1910.

[L. S.] W. S. KOGER,
Notary Public.

Trade-mark may be obtained for five cents each, by addressing the Commissioner of Patents,

Appellant is the owner of the trade-marks No. 36,437, May 23, 1905; 36,439, May 23, 1905; No. 44,171, May 28, 1901; Nos. 69,855, March 8, 1904; No. 69,856, March 8, 1904; 71,897, April 18, 1910; and 72,424, April 18, 1910.

The trade-mark is usually applied to the goods themselves by stamping, etching or otherwise associating it therewith, or to packages and cases containing the goods by labels used in connection therewith or by otherwise associating the mark with the goods.

[L. S.] WM. A. ROGERS, LTD.
By E. C. BAKER,
Secretary.

TRADE-MARK.

No. 48,369. REGISTERED MAR. 31, 1903.

WM. A. ROGERS LIMITED.

SILVER PLATED FLAT WARE, HOLLOW WARE, AND TABLEWARE.

APPLICATION FILED MAY 30, 1900.

WM. A. ROGERS

Wm. A. Rogers, Limited
By
Warfield & Bull
Attorneys

TRADE-MARK

WM. A. ROGERS

WM. A. ROGERS LIMITED

SILVER PLATED FLAT WARE, HOLLOW WARE, AND TABLEWARE

UNITED STATES PATENT OFFICE.

WM. A. ROGERS LIMITED, OF TORONTO, ONTARIO, CANADA, AND NIAGARA FALLS, NEW YORK.

TRADE-MARK FOR SILVER-PLATED FLAT WARE, HOLLOW WARE, AND TABLEWARE.

No. 62,369. Statement and Declaration. Registered March 31, 1908.

Application filed May 25, 1908. Serial No. 6,565.

STATEMENT.

To all whom it may concern:

Be it known that WM. A. ROGERS LIMITED, a corporation duly organized under the laws of the Province of Ontario, Dominion of Canada, and located in and having its principal office at Toronto, Canada, and doing business at 445 King street, west, in said city, and having a manufacturing establishment at Niagara Falls, State of New York, has adopted for its use the trade-mark shown in the accompanying drawing, for the following products of such manufacturing establishment, namely: silver plated ware comprising silver-plated flat ware, hollow ware and tableware, in Class 28, Jewelry and precious metal ware.

This trade-mark has been continuously used in the business of said corporation, or that of its predecessor, since 1894.

The trade-mark is usually displayed upon the goods themselves by stamping it thereon or otherwise associating it therewith: on packages and cases containing the goods; on labels used in connection therewith, and by otherwise associating it with the manufacture, use and sale of said goods.

WM. A. ROGERS LIMITED,
By WILLIAM A. ROGERS,
A Director and General Manager.

DECLARATION.

State of New York, city and county of New York, ss.

WILLIAM A. ROGERS, being duly sworn, deposes and says that he is a director and general manager of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the United States and between the United States and foreign nations or Indian tribes, and particularly with Canada and Great Britain; that the drawing presented truly represents the trade-mark sought to be registered; that the specimens show the trade-mark as actually used upon the goods; that the manufacturing establishment of said corporation is located at Niagara Falls, State of New York; that the goods claimed in this application are the products of such establishment; and that the mark has been in actual use as a trade-mark of the applicant and of applicant's predecessor, from whom title was derived, for ten years next preceding the passage of the act of February 20th, 1905, and that, to the best of his knowledge and belief, such use has been exclusive.

WILLIAM A. ROGERS.

Subscribed and sworn to before me, a notary public, this 21st day of February, 1908.

[L. S.] HELEN M. SEAMANS,
Notary Public, No. 75, New York County.

TRADE-MARK.

No. 69,548. REGISTERED JUNE 18, 1906.

WM. A. ROGERS LIMITED.

SILVER-PLATED WARE, COMPRISING SILVER PLATED FLAT WARE, HOLLO WARE, AND TABLEWARE.

APPLICATION FILED MAY 26, 1906.

UNITED STATES PATENT

Wm. A. Rogers Limited
By
Warfield & Dyer

W. R.

UNITED STATES PATENT OFFICE.

A. ROGERS LIMITED, OF TORONTO, ONTARIO, CANADA, AND NIAGARA FALLS, NEW YORK.

TRADE-MARK FOR SILVER-PLATED WARE, COMPRISING SILVER-PLATED FLAT WARE, HOLLOW WARE, AND TABLEWARE.

No. 29,549. Statement and Declaration. Registered June 16, 1908.

Application filed May 25, 1908. Serial No. 6,561.

STATEMENT.

To whom it may concern:

Be it known that WM. A. ROGERS LIMITED, a corporation duly organized under the laws of the Province of Ontario, Dominion of Canada, located in and having its principal office at Toronto, Canada, and doing business on King street west, in said city, and having a manufacturing establishment at Niagara Falls, State of New York, has adopted for its use a trade-mark shown in the accompanying drawing, for the following products of its manufacturing establishment, namely: silver-plated flat ware, comprising silver-plated knives, hollow ware, and tableware in the nature of jewelry and precious-metal ware.

This trade-mark has been continuously used in the business of said corporation, and that of its predecessor, since 1896.

The trade-mark is usually displayed upon the goods themselves by stamping it thereon, or otherwise associating it therewith; on packages containing the goods; on labels used in connection therewith, and by otherwise associating it with the manufacture, use and sale of said goods.

WM. A. ROGERS LIMITED,
By WILLIAM A. ROGERS,
Manager.

DECLARATION

City and county of New York, ss.:

William A. Rogers, being duly sworn, deposes and says that he is a director and manager of the corporation, the applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the trade-mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said trade-mark either in the identical form or in such near resemblance thereto as might be calculated to deceive; that said trade-mark is used by said corporation in commerce among the several States of the United States and between the United States and foreign nations or Indian tribes, and particularly with Canada and Great Britain; that the drawing presented truly represents the trade-mark sought to be registered; that the facsimiles show the trade-mark as actually used upon the goods; that the manufacturing establishment of said corporation is located at Niagara Falls, State of New York, and that the goods claimed in this application are the products of such establishment.

WILLIAM A. ROGERS.

Subscribed and sworn to before me, a notary public, this 12 day of March 1908.

[L. S.] H. ADOLPH WINKOPP,
Notary Public, 101, New York County.

IX.

CERTIFICATE OF REGISTRATION OF TRADE-MARK OF H. E. HEACOCK CO. IN THE PHILIPPINE ISLANDS.

No. 7437

The Government of the Philippine Islands

DEPARTMENT OF COMMERCE AND COMMUNICATIONS

BUREAU OF COMMERCE AND INDUSTRY

MERCANTILE REGISTER

To All to Whom These Presents Shall Come, Greeting:

Be It Known, That by the records of the MERCANTILE REGISTER, BUREAU OF COMMERCE AND INDUSTRY, it appears that H. E. Heacock Co. of Manila, Philippine Islands,

did, on the 21st day of May, 1918, deposit in said Mercantile Register for REGISTRATION [illegible] a

TRADE-MARK

MARCA COMERCIAL

for Spoons and other Hollowware whether nickel, Silver plated or silver, as well as nickel, Silver plated or silver goods of all kinds sacred and secular cutlery.

And the date of the receipt thereof was duly noted and recorded that on the 21st day of May, 1918, at 11 o'clock a.m., there was deposited therewith a statement and a written declaration under the oath of Samuel J. Gaches Resident [illegible] of which are hereto annexed, and the said Complainant having made the payment of a fee of TWENTY-FIVE DOLLARS, and complied with the regulations in such cases provided by the Director and in all other respects with the requirements of Act No. 666 of the Philippine Commission, entitled "An Act defining property in Trade-Marks, Trade-Names and providing for the protection of the same, defining unfair competition and providing remedies against the same, providing registration for Trade-Marks and Trade-Names, and defining the effect to be given to registration under the Switch Royal Decree of eighteen hundred and eighty-eight relating to the registration of Trade-Marks and the effect to be given to registration under the Act," and also of the Philippine Legislature Nineteen Hundred and twenty-eight, entitled [illegible] Act, nineteen hundred and eighteen, the said [illegible] statements, and declaration were duly recorded, and the said Trade-Mark has been duly registered in the said Mercantile Register this 27th day of June nineteen hundred and eighteen, and protection therefore will remain in force for the TERM OF TWENTY YEARS from the date mentioned in accordance with section 16 of said Act.

IN TESTIMONY WHEREOF I have hereunto set my hand and caused [illegible]

[illegible]

The Government of the Philippine Islands

DEPARTMENT OF COMMERCE AND COMMUNICATIONS

BUREAU OF COMMERCE AND INDUSTRY

MERCANTILE REGISTER

ROGERS.

No 2251
June 27 1918 104-

Manila, P. I., May 22. 1918.

To the Chief of the Division of
Archives, Patents, Copyrights, and
Trademarks,
Manila, P. I.

Sir:-

The undersigned presents herewith five facsimiles of its lawful trademark, and requests that the same, together with the accompanying statement and declaration, may be registered in the Division of Archives, Patents, Copyrights, and Trademarks in accordance with the law in such cases made and provided.

H. E. Heacock Co.

By

S T A T E M E N T.

TO ALL WHOM IT MAY CONCERN:-

Be it known that H. E. Heacock Co., a corporation organized under the laws of the Philippine Islands, and located in the City of Manila, has adopted for its use a trademark for spoons and other flatware whether nickel, silver plated, or silver, as well as nickel, silver plated and silver goods of all kinds save and except cutlery, of which the following is a description:-

The trademark consists of the word "ROGERS", in ordinary Roman capitals.

The trademark has been continuously used in the business of said corporation for fifteen years.

The class of merchandise to which this trademark is appropriated is spoons, and other flatware whether nickel, silver plated or silver, as well as nickel, silver plated or silver goods of all kinds save and except cutlery.

The trademark is applied or affixed to the goods by stamping or engraving, or applying the same in any other suitable manner to the back, bottom, side, edge, or top of the goods wherever convenient, and is also applied by printing o' on labels placed upon the packages containing the goods.

H. E. Heacock Co.

By

S T A T E M E N T.

TO ALL WHOM IT MAY CONCERN:-

Be it known that H. E. Heacock

, a corporation organized under the laws of the Philippine

stamping or otherwise applying the name in any other

suitable manner to the back, bottom, side, edge, or top of

the goods wherever convenient, and is also applied by print-

ing or on labels placed upon the packages containing the goods.

H. E. Heacock Co.

BY

D E C L A R A T I O N.

UNITED STATES OF AMERICA,
PHILIPPINE ISLANDS, } ss.
CITY OF MANILA.

Samuel F. Gaches, being duly sworn deposes and says: That he is the President of the firm of H. E. Heacock Co., the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that the said firm at this time has a right to the use of the tradeaark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the trademark is used by the said corporation in commerce in the Philippine Islands, and that the description and facsimiles presented for record truly represent the trademark sought to be registered.

Cedula No. F-114 issued at
Manila, January 2nd, 1918.

Sworn to and subscribed before me,
a notary public, this 22 day of
May, 1918.

Notary Public.
Commission expires
December 31st, 1918.

Doc. 57.
Pag. No. 15
Series of 1918.